

MT LEGISLATIVE HISTORY

Chapter 543 19 29

Bill H S 301

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H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

Hearing Date(s) Feb 13 ☒ C

Mar 16 ☒ C

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Did this bill originate in an interim committee? Yes No

Committee

Report

Forty-Sixth LEGISLATIVE SESSION

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COMMITTEE ON Judiciary-Senate

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BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB-296	1/30/79	2/5/79	2/8/79	2/7/79					
SB-311	1/31/79	2/13/79	2/19/79			2/18/79			
SB-322	1/31/79	2/7/79	2/8/79		2/5/79				
SB-214	1/31/79	2/6/79	2/19/79			2/18/79			
SJR-12	1/31/79	2/8/79	+ in order taken to floor				Senate		
HB-184	1/31/79	2/23/79	2/23/79				2/23/79		
HB-174	1/31/79	2/23/79	2/23/79					2/23/79	
HB-203	1/31/79	2/28/79	3/1/79						3/1/79
HB-223	1/31/79	2/28/79	3/6/79					3/1/79	
HB-225	1/31/79	2/28/79	^{Table} 2/28/79						
HB-226	1/31/79	2/28/79	2/28/79				2/28/79		
HB-229	1/31/79	3/1/79	3/2/79					3/1/79	
HB-242	1/31/79	3/1/79	3/2/79					3/1/79	
HB-271	1/31/79	3/2/79	3/8/79				3/8/79		
HB-308	1/31/79	3/2/79	3/2/79				3/2/79		
HB-252	2/1/79	3/1/79	3/6/79						3/6/79

Use a separate sheet for Senate, House Bills, and Resolutions.

1 *Senate* BILL NO. *301*
2 INTRODUCED BY *Sen. Mark T. Anderson*
3 BY REQUEST OF *J. Brown*
4 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY;
8 AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-105,
9 41-3-201 THROUGH 41-3-205, 41-3-301, AND 41-3-302, MCA."

10
11 WHEREAS, Governor Judge appointed a task force to
12 recommend ways in which services to families in which abuse
13 and neglect are occurring could be improved; and

14 WHEREAS, the task force recognizes that the most
15 crucial actions toward improving services to families must
16 be taken by the local community; and

17 WHEREAS, the task force recognizes that child abuse and
18 neglect is a multifaceted problem and that no one agency or
19 discipline, by itself, has the resources or perspective to
20 resolve or contain the problem; and

21 WHEREAS, the task force has heard testimony from
22 numerous individuals, legislative staff, and other persons
23 who deal with abused and neglected children and their
24 families; and

25 WHEREAS, existing child abuse and neglect laws do not

1 meet requirements allowing Montana to qualify for federal
2 grants under Public Law 93-247.

3
4 THEREFORE, it is the intent of this bill to address the
5 problems facing the children, families, and communities of
6 this state regarding child abuse and neglect.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 41-3-101, MCA, is amended to read:

10 "41-3-101. Declaration of policy. (1) It is hereby
11 declared to be the policy of the state of Montana to:

12 (a) insure that all youth are afforded an adequate
13 physical and emotional environment to promote normal
14 development;

15 (b) compel in proper cases the parent or guardian of a
16 youth to perform the moral and legal duty owed to the youth;

17 (c) achieve these purposes in a family environment
18 whenever possible; and

19 (d) preserve the unity and welfare of the family
20 whenever possible.

21 (2) It is the policy of this state to provide for the
22 protection of children whose health and welfare are ~~or may~~
23 ~~be~~ adversely affected and further threatened by the conduct
24 of those responsible for their care and protection. It is
25 intended that the mandatory reporting of such cases by

professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever possible appropriate."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" ~~for purposes of this chapter~~ means any person under 18 years of age.

(2) ~~"Abuse" or "neglect" means:~~ An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare:

~~(a) the commission or omission of any act or acts which materially effect the normal physical or emotional development of a youth. Any excessive physical injury, sexual assault, or failure to thrive, taking into account the age and medical history of the youth, shall be presumed to be nonaccidental and to materially effect the normal development of the youth;~~

~~(b) the commission or omission of any act or acts by any person in the status of parent, guardian, or custodian who thereby and by reason of physical or mental incapacity~~

~~or other cause refuses or, with state and private aid and assistance, is unable to discharge the duties and responsibilities for proper and necessary subsistence, education, medical, or any other care necessary for the youth's physical, moral, and emotional well-being;~~

(3) ~~"Dependent youth" means a youth who is abandoned, dependent upon the public for support, destitute, without parents or guardian or under the care and supervision of a suitable adult, or who has no proper guidance to provide for his necessary physical, moral, and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of the child. "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:~~

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child, or exploits the child or allows the child to be exploited for sexual purposes;

(c) fails to supply the child with adequate food, clothing, shelter, education, or health care, though financially able to do so or offered financial or other

reasonable means to do so:

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future; or

(e) fails to provide the child with adequate care, supervision, or guardianship by specific acts or omissions of a similarly serious nature requiring the intervention of the child protective service or a court;

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this chapter. "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk or harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an injury to the intellectual or psychological capacity of a child as

evidenced by an identifiable and substantial impairment of his ability to function within his normal range of performance and behavior, with due regard to his culture.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 3. Section 41-3-104, MCA, is amended to read:

"41-3-104. Payment for support of dependent--and neglected--children youth in need of care -- reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing dependent--and-neglected-children a youth in need of care in approved a licensed family foster homes home, or--licensed private--institutions child care agency, group home, or private treatment facility, the department shall pay by its

1 check or draft each month from any funds appropriated for
2 that purpose the entire amount agreed upon for board,
3 clothing, personal needs, and room of such children.

4 (2) On or before the 20th of each month the department
5 shall present a claim to the county of residence of such
6 children for one-half the payments so made during the month.
7 The county must make reimbursement to the department within
8 20 days after such claim is presented."

9 Section 4. Section 41-3-105, MCA, is amended to read:

10 "41-3-105. Recovery from parents -- division between
11 state and county. (1) In the event any recovery is made from
12 the a parent or parents of children for whom board,
13 clothing, personal needs, and room have been paid by the
14 state and county, any amount so recovered shall be divided
15 equally between the department and the county of residence
16 of such child or children.

17 (2) Any amount collected from a parent or parents
18 when a child is placed in a foster home, shall be
19 transmitted to the department of social and rehabilitation
20 services. The department shall then pay to the county
21 one-half of the amount so collected."

22 NEW SECTION. Section 5. Interagency cooperation. To
23 effectuate the purposes of this chapter, the county welfare
24 department shall cooperate with and shall seek the
25 cooperation and involvement of all appropriate public and

1 private agencies, including health, education, social
2 services, and law enforcement agencies; juvenile courts; and
3 any other agency, organization, or program providing or
4 concerned with human services related to the prevention,
5 identification, or treatment of child abuse or neglect.
6 Such cooperation and involvement may not include joint case
7 management but may include joint policy planning, public
8 education, information services, staff development, and
9 other training.

10 NEW SECTION. Section 6. Child protection teams. The
11 county attorney or the county welfare department may convene
12 one or more temporary or permanent interdisciplinary child
13 protective teams. These teams may assist in assessing the
14 needs of, formulating and monitoring a treatment plan for,
15 and coordinating services to the child and his family. The
16 supervisor of child protective services of the county
17 welfare department or his designee shall serve as the team's
18 coordinator. Members shall serve at the invitation of the
19 coordinator and shall include representatives of appropriate
20 health, mental health, social service, and law enforcement
21 agencies.

22 Section 7. Section 41-3-201, MCA, is amended to read:

23 "41-3-201. Reports. (1) Any physician who examines
24 attends on treats a person under the age of majority or any
25 nurse, teacher, social worker, attorney, law enforcement

~~officer or any other person who has reason to believe that a child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect or has been willfully neglected shall report the matter promptly to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county where the child resides. When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, who then shall notify the county attorney of the county where the child resides.~~

(2) Professionals and officials required to report are:

(a) physicians, residents, interns, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and

employees who work during regular school hours;

(e) a social worker, licensed day-care center, or any other licensed child-care facility;

(f) foster care, residential, or institutional workers;
or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

~~(2)(4)~~ This report. The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

NEW SECTION. Section 8. Procedure in case of child's

1 death. (1) Any person or official required to report by law
2 who has reasonable cause to suspect that a child has died as
3 a result of child abuse or neglect shall report his
4 suspicion to the appropriate medical examiner or law
5 enforcement officer. Any other person who has reasonable
6 cause to suspect that a child has died as a result of child
7 abuse and neglect may report his suspicion to the
8 appropriate medical examiner or law enforcement officer.

9 (2) The medical examiner or coroner shall investigate
10 the report and submit his findings, in writing, to the local
11 law enforcement agency, the appropriate county attorney, the
12 local child protective services, and, if the person making
13 the report is a physician, the physician.

14 Section 9. Section 41-3-202, MCA, is amended to read:
15 "41-3-202. Action on reporting ~~---maintenance--of~~
16 ~~central registry on child abuse.~~ (1) ~~if from said report it~~
17 ~~shall appear that the~~ Upon receipt of a report as required
18 by 41-3-201 that a child suffered such injury or injuries or
19 willful neglect, is or has been abused or neglected, a the
20 social worker or the county attorney or a peace officer
21 shall promptly conduct a thorough investigation into the
22 home of the child involved or any other place where the
23 child is present and into the circumstances surrounding the
24 injury of the child and into all other matters which in the
25 discretion of the ~~social worker shall be~~ investigator are

1 ~~relevant and material to the investigation. if from the~~
2 ~~investigation it shall appear that the child suffered such~~
3 ~~injury or injuries or willful neglect, the department shall~~
4 ~~provide protective services to protect the child and~~
5 ~~preserve the family. The department will advise the county~~
6 ~~attorney of its investigation.~~

7 (2) ~~The investigating social worker shall also furnish~~
8 ~~a written report to the department of social and~~
9 ~~rehabilitation services which shall have the responsibility~~
10 ~~of maintaining a central registry on child abuse or willful~~
11 ~~neglect cases. The social worker is responsible for~~
12 assessing the family and planning for the child. If the
13 child is treated at a medical facility, the social worker,
14 county attorneys, or peace officer shall, consistent with
15 reasonable medical practice, have the right of access to the
16 child for interviews, photographs, and securing physical
17 evidence and have the right of access to relevant hospital
18 and medical records pertaining to the child.

19 (3) If from the investigation it appears that the
20 child suffered abuse or neglect, the department shall
21 provide protective services to the child and any other child
22 under the same care. The department will advise the county
23 attorney of its investigation.

24 (4) The investigating social worker, within 60 days of
25 commencing an investigation, shall also furnish a written

~~report to the department. The department shall maintain a record system containing child abuse and neglect cases.~~

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county in which the facility is located."

Section 10. Section 41-3-203, MCA, is amended to read:

"41-3-203. Immunity from liability. Anyone participating in the making of a report pursuant to the provisions of this chapter or investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, resulting therefrom or furnishing hospital or medical records as required by 41-3-202 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose."

Section 11. Section 41-3-204, MCA, is amended to read:

"41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where

~~such--e the report or any contents thereof are sought to be introduced into evidence, such the report or its contents thereof or any other fact or facts related thereto to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure of confidentiality granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.~~

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered trauma or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or

guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 12. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services, and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential unless the court determines that they should be released except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protection teams as authorized under [section 6] for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 13. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate legal action. The department may also leave the child in his home and place a child protective attendant in the home for a period of 48 hours.

(2) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents. No child who has been removed from his home or any other place for his protection or care may be

1 placed in a jail.

2 ~~(3) The department of social and rehabilitation~~
3 ~~services and the county welfare department shall comply with~~
4 ~~the procedure set forth in 41-3-202. A petition shall be~~
5 ~~filed within 48 hours of emergency placement of a child~~
6 ~~unless arrangements acceptable to the agency for the care of~~
7 ~~the child have been made by the parents.~~

8 (4) The department of social and rehabilitation
9 services and the county welfare department shall make such
10 necessary arrangements for the youth's well-being as are
11 required prior to the court hearing."

12 Section 14. Section 41-3-302, MCA, is amended to read:

13 "41-3-302. Responsibility of providing protective
14 services. (1) The department of social and rehabilitation
15 services and the county welfare department shall have the
16 primary responsibility to provide the protective services
17 authorized by this chapter and shall have the authority
18 pursuant to this chapter to take temporary, limited, or
19 permanent custody of a child when ordered to do so by the
20 court, including the right to give consent to adoption.

21 (2) The county welfare department shall respond to
22 emergency reports of known or suspected child abuse or
23 neglect 24 hours a day, 7 days a week."

24 NEW SECTION. Section 15. Guardian ad litem. In every
25 judicial proceeding the court shall appoint for any child

1 alleged to be abused or neglected a guardian ad litem who,
2 whenever possible, shall be an attorney. When necessary the
3 guardian ad litem may serve at public expense.

4 NEW SECTION. Section 16. Penalty for failure to
5 report. (1) Any person, official, or institution required by
6 law to report known or suspected child abuse or neglect or
7 required to perform any other act who fails to do so or who
8 prevents another person from reasonably doing so is
9 punishable by a fine not to exceed \$500, by imprisonment in
10 the county jail not to exceed 30 days, or by both such fine
11 and imprisonment and shall be civilly liable for the damages
12 proximately caused by such failure or prevention.

13 (2) A parent or other person responsible for a child's
14 care who as a result of the legitimate practice of his
15 religious beliefs does not provide specified medical
16 treatment for a child is not considered negligent for that
17 reason alone. However, when the child's health requires it,
18 the court may order that medical services be provided to the
19 child pursuant to 41-3-403.

20 Section 17. Saving clause. This act does not affect
21 rights and duties that matured, penalties that were
22 incurred, or proceedings that were begun before the
23 effective date of this act.

24 Section 18. Codification. (1) It is intended that
25 sections 4 and 5 of this act be codified as an integral part

1 of Title 41, chapter 3, part 1, and the provisions of Title
2 41, chapter 3, apply to sections 4 and 5 of this act.

3 (2) It is intended that section 8 of this act be
4 codified as an integral part of Title 41, chapter 3, part 2,
5 and the provisions of Title 41, chapter 3, apply to section
6 8 of this act.

7 (3) It is intended that sections 15 and 16 of this act
8 be codified as an integral part of Title 41, chapter 3, part
9 3, and the provisions of Title 41, chapter 3, apply to
10 sections 15 and 16 of this act.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 13, 1979

The thirty-sixth meeting of the Senate Judiciary Committee was called to order on the above date by Senator Everett R. Lensink in room 331 of the capitol building at 9:34 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 301:

Senator Lensink turned the chair over to Senator Olson, Vice-Chairman, as he was sponsor of this bill, which is an act to generally revise the state laws relating to child abuse, neglect and dependency. Senator Lensink gave an explanation of this bill and he stated that this bill grew out of a task force on child abuse. He introduced Dr. Clayton McCracken.

Dr. McCracken gave a statement in support of this bill.
(See Exhibit A.)

Dr. Jeff Strickler from the Helena Medical Clinic, P.S.C., gave a statement in support of this bill. (See Exhibit B.)

Norma Vestre, Chief, Social Services Bureau of the Social and Rehabilitation Services, gave a statement in support of this bill. (See Exhibit C.)

Also offered to the committee was further written testimony.
(See Exhibits C and D.)

John Mallard, representing the Montana Coalition of Human Services, gave a statement in support of this bill.

There was some testimony from Beverly Gorme, representing the Junior League of Billings, in support of this bill.

Tom Honzel, representing the County Attorneys Association, stated that they are in favor of this legislation and he said that the most difficult case to handle is the child abuse case and that the child is not able to tell you very much himself.

Phil Campbell, representing the Montana Education Association, stated that they were in support of this bill.

Ange Hansen, representing the Association for the Developmentally Disabled, stated that anything that we can do to prevent child abuse will help prevent mental retardation also.

William Hutchison, representing the Montana Legal Services, stated that they find themselves in the position of representing parents in these cases, and he felt the danger of the bill is that it makes it too easy to remove the child from the home. He also said that the privacy rights of the parents are impaired, and once a child is removed from a family, there is much trauma and this affects the future roles of the child and as an adult as well. He also said that on page 5, line 14 the language "adequate health care" is too broad a term; and on line 15 page 5, that he wondered about the language "threatened harm" and on page 6, he wondered if the definition of dependent would be inclusive of the child who is totally dependant on the state for support. He also questioned the ramifications of the provision on page 12, lines 20 to 23, which provides for removal of any other child who was under the care of the same parent of the child who was abused. He stated there are serious problems with that especially with lowering the standards of removal of a child. He also was concerned with the cost of removing a child to a home under an emergency.

There were some questions asked by Senator Towe to Burt Annin.

Senator Anderson asked if it was typical that where one child in a family is abused that the rest are not. Dr. Strickler said that one child is often the scapegoat, and he is the one who is abused, and when that child is removed, the stress is still there and another child is then abused. He stated that this is the leading cause of death and the leading cause of retardation. Dr. Strickler also stated that when it is determined that a child should be removed, the law states that you have to have a hearing within 72 hours and he feels very strongly that all potentially damaged children should be removed.

Mr. Honzel stated that one of the problems is that once the child is removed and the parent is threatened with action, the parents frequently relinquish the child and they are afraid of losing all the children for a long time.

Senator Brown stated that this should be a civil matter instead of a criminal, and Senator Lensink stated that we do want to amend this to civil.

There being no further comments or questions, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 346:

Senator Towe stated that this bill arose from the concern of a number of people. This bill is an act to provide more equal access to the courts of Montana by requiring the allowance of costs and attorney's fees to successful plaintiffs and defendants who are natural persons or small businesses and who are successful in a law suit against a government entity, etc. He gave an example of a case in which he was involved.

Senate Bill 301

In March 1977, Governor Judge, recognizing the problem of providing services to families in which your neglect occur, appointed the Task Force of Child Abuse and Neglect. The Task Force heard testimony from a number of individuals who daily work with abused and neglected children. Drafts of the recommendation have been widely discussed.

Child abuse and neglect is a cycle. Parents whose children were abused and neglected find it difficult to raise their own children in a healthy manner. When parents are abusive or neglecting, society must intervene to break that cycle. When the abusive parents are neurotic, proper therapy for them and the child often rehabilitates the family to the point that the environment will be safe for the child.

These essential tasks can only be accomplished locally. The state level some actions can facilitate care of these families. These actions were recommended in our report to the Governor. Copies of the report are available to the committee. Included in our recommendations are proposed changes in the state law which have been incorporated in Senate Bill 301.

In 1974, the U.S. Congress passed the Child Abuse, Prevention and Treatment Act, Public Law 93247, which provides some funds to qualifying states. Montana does not qualify because of inadequate definition, no requirement for guardian ad litem, no provision for an independent investigation of institutional abuse and failure to make unauthorized disclosure of records a crime. Senate Bill 301 would correct these discrepancies. Even without federal incentives, we should recommend these changes because they represent the best legal thinking today and would improve services here in Montana. Obtaining federal funds is not our objectives.

The Task Force is concerned about the problem of providing services to Indian reservation families because of the

confusion over jurisdiction. The Task Force has encouraged Indian reservations to adopt codes for child abuse and neglect. For this purpose, we secured a small federal grant for the Montana Intertribal Policy Board. If Senate Bill 301 is passed, we can then point out to the reservation communities that Montana has a good law and we can encourage them to model their codes after the state law.

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February 12, 1970

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E.P. GUNDERSEN, M.D.
B.C. RICHARDS, M.D.
J.H. STRICKLER, M.D.

SURGERY:
W.J. HOOPES, M.D.
K.J. WRIGHT, M.D.

TO: Senator Everett R. Lensink and Members of the Senate
Judiciary Committee

FROM: Jeffrey H. Strickler, M.D.

RE: "Senate Bill #301

As a practicing Helena Pediatrician, a member of the American Academy of Pediatrics, Montana Chapter Committee on Child Abuse, a member of local and State Task Forces on the Prevention of Child Abuse and as a member of the steering committee for The National Center on the Prevention and Treatment of Child Abuse and Neglect, I would like to speak in strong support of Senate Bill #301.

As you are probably aware, child abuse and neglect is a relatively recently recognized problem that only began to receive attention in the 1960's. Good and well intentioned laws were passed at this time, including our own statutes, to attempt to deal with this problem. Our experience of the last decade, however, has brought forth some problems that need correction; and has seen the development of new modes of therapy that need legal sanction. Other people will be testifying on specific points. I see as critical, however, such changes as altering the word possible to appropriate (page 3, line 5) to allow for the best placement of children. In the past Judges have been constrained by statute to put a child back in a family when this was "possible" but clearly inappropriate. I also see as critical the new section (page 7, line 22) and new section (page 8, line 10) that mandate interagency cooperation and child protection teams. Experience in Montana as well as other parts of the country have shown that such interdisciplinary activity has led to the best solutions for difficult problems. These teams and cooperative efforts have been tried with varying success in different parts of Montana but have been limited in their effectiveness because of a question of the legality of such a group effort. By giving legal sanction to such common efforts and pooling of expertise and resources, the children of Montana will be best served.

As a contributing author to a recent HEW publication on the Management of Child Abuse and Neglect in Hospitals, I would like to speak specifically to the new wording on page 12, line 11, regarding the obtaining of photographs and evidence in a hospital. It is common medical ethics not to allow the photographing of patients without their consent and to protect the privacy of patients while in hospitals. With this on one hand and the moral and legal obligation to report and assist in cases of child abuse and neglect, hospital administrators presently are placed in a dilemma. If the legislature can place in the statutes a paragraph of freeing hospitals from the ethical problems of privacy, while participating in a legitimately authorized investigation, the handling of child abuse and neglect cases will be greatly facilitated, and hospital cooperation will be easily obtained.

Page 2

Further, on page 13, line 16, is the addition of a sentence requiring the furnishing of hospital or medical records for a legitimate investigation. Many hospitals in Montana have refused to release records, except upon court hearing and subpoena and yet it is just these records that document the need for the investigation. This sentence reinforces 41-3-202 and facilitates investigations by allowing access to records as required by law.

Finally, page 14, line 10, and the following are very important statements that will allow physicians or others caring for a child or those who are investigating a case of child abuse and neglect, to obtain the necessary documentation that such injuries actually did take place and the extent of those injuries.

Finally I would like to speak briefly on the problem of institutional neglect. This has been the subject of several newspaper articles and a recent large monograph published by HEW. It is tragic to think that such problems actually do exist in our institutions but since the State of Montana is the guardian of these people, it seems only appropriate to have a paragraph allowing for and encouraging the reporting and investigation of complaints on such facilities.

JHS:jzl

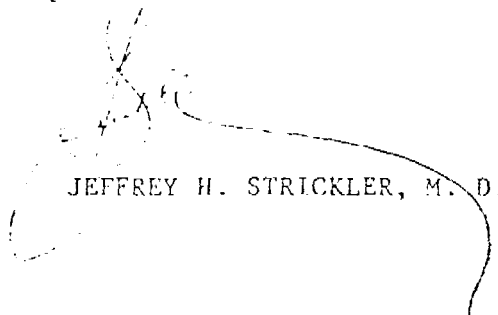

JEFFREY H. STRICKLER, M. D.

Exhibit B

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
TUESDAY, FEBRUARY 13, 1979

Senate Bill 301 --- A Bill for an Act Entitled: "AN ACT TO GENERALLY REVISE THE STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, 41-3-105, 41-3-201 Through 41-3-205, 41-3-301, and 41-3-302, MCA."

Mr. Chairman and members of the Committee. The Department of Social and Rehabilitation Services supports the passage of Senate Bill 301 in its entirety, but we would like to limit our comments to one specific section today. Section 6 provides for the creation of child protection teams to coordinate and strengthen the efforts of various agencies in helping children and their families obtain counselling and treatment.

Under present law when a social worker investigates a report of abuse, he or she often finds that the family is already working with several other agencies. In order to consolidate these efforts and to allow various agencies to share relevant information on child abuse cases, Senate Bill 301 proposes the creation of interdisciplinary child protection teams.

Currently, there are 12 teams operating throughout the state. Under the present law, they have encountered some confusion over their ability to share information in order to assess the needs of the child and his or her family. It is our hope that SB 301 would eliminate that confusion by statutorily authorizing a county attorney or county welfare department to set up these teams. The proposed legislation states that the supervisor of a county's child protective services would act as the team's coordinator. We have proposed tha SB 301 be amended to require each team to consist of a social worker, a member of a local law enforcement agency, a representative from the county attorney's office and a representative of the medical profession, as well as representatives of appropriate health, mental health, social service and law enforcement agencies as the need arises. This amendment would ensure that all these agencies would work together to best serve the child and family.

With the support of the Yellowstone County Attorney, Yellowstone County currently has a successful child protection team. The success of Yellowstone County's team is largely because of the County attorney's support. We would like to see all counties benefit from this type of operation.

We believe Section 6 could achieve that goal. SRS supports the creation of these teams as a means to strengthen and to streamline the county's efforts to help these children and to encourage interaction and close collaboration among diverse community resources that provide the various legal, social, educational, medical and psychological services.

Testimony on Senate Bill #301

We also support Senate Bill #301 and particularly want to stress the importance of a new section (15) which requires the court to appoint a guardian ad litem for the child who is brought to the attention of the court and alleged to be abused or neglected.

For purposes of clarification, let me point out that we are not speaking here of the child who is relinquished at birth and brought into court under a dependency action; we are speaking only of children alleged to be abused or neglected. It is our position that the provision of a guardian ad litem for each child is further protection for each child.

It has long been the right of parents to be represented by counsel in court. The county attorney's office represents the county social worker. Frequently, other interested parties are also represented. This leaves the child, who has the most to lose or gain, with no one to speak for him. He must, instead, depend upon the good will of others who may have concerns other than the best interests of the child.

until the last few years, it has generally been felt that the social worker and the county attorney's office speak for and represent the child in these actions. The problem is that the social worker usually works intensively with the families involved in these actions, and it is possible to lose perspective. There may be many conflicts and pressures within the family unit with a result that the child's needs become less clear, particularly when tangled among the needs of all other family members. It is the county attorney's responsibility to represent the county social worker. This may result in the court's receiving biased informa-

tion. Additionally, parents and their attorneys may represent a different, but equally biased point of view. A guardian ad litem however, offers a neutral evaluation of the child's situation. He has no other responsibilities. The guardian ad litem can see to it that all information relevant to the best interest of the child is presented.

It is our personal belief that the current system works very well when the social worker, county attorney, and judge are trained, experienced, and have good practical judgment. Unfortunately, this is not always the case. The addition of a guardian ad litem provides further protection that our system work effectively to meet the needs of children.

Exhibit C

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
TUESDAY, FEBRUARY 13, 1979

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It is our personal belief that the current system works very well when the social worker, county attorney, and judge are trained, experienced, and have good practical judgment. Unfortunately, this is not always the case. The addition of a guardian ad litem provides further protection that our system work effectively to meet the needs of children.

The Junior League of Billings, Inc.
Billings, Montana

119 Clark Avenue
Billings, Montana, 59101
February 7, 1979

The Honorable Everett R. Lensink
Chairman, Senate Judiciary Committee
Senate Chambers, State Capitol
Helena, Montana, 59601

Dear Senator Lensink and Judiciary Committee Members:

The Junior League of Billings, Inc. would like this position paper to be entered into the record as testimony in support of Senate Bill No. 301.

The Junior League of Billings, Inc, a private non-profit organization composed of volunteers, has been concerned with children and child related issues for a number of years. Over the past six years, The Junior League of Billings has provided monies, sponsored workshops, published brochures, sponsored in-service training for the teachers of School District #2 and conducted a massive public awareness campaign utilizing trained volunteers in the area of Child Abuse and Neglect. We contend that the cycle of Child Abuse and Neglect can best be broken with a preventative program such as preparation for parenthood but realize that children and families presently in crisis situations involving Child Abuse and Neglect must be helped.

Therefore, The Junior League of Billings, Inc. favors Senate Bill No. 301 for the following reasons:

1. Senate Bill No. 301 gives a more cohesive force to the child welfare area by streamlining the investigative process and by providing better services for the families and children involved.
2. Senate Bill No. 301 increases the responsibility for those who must report suspect Child Abuse and Neglect and imposes a penalty on those who fail to do so as well as providing immunity for those who do report suspect Child Abuse and Neglect in good faith.

The Junior League of Billings, Inc.
Billings, Montana

Page 2 (Continued testimony by The Junior League of Billings, Inc.
in support of Senate Bill No. 301)

3. Senate Bill No. 301 establishes a time limit that requires the agency to complete its investigation within 60 days of commencing an investigation which will provide the family with the necessary services as soon as possible.
4. Senate Bill No. 301 provides for a guardian ad litem in judicial proceedings who will be concerned with the child's best interest.

The Junior League of Billings, Inc. asks that the Senate Judiciary Committee support the passage of Senate Bill No. 301 so that we can more adequately protect the health and safety of Montana's children.

We thank you for taking the time to read our testimony.

Sincerely yours,

Ann L. Overturf

Ann L. Overturf, Chairman
Public Affair Committee
The Junior League of Billings

Shelly H. Bell

Shelly H. Bell, Chairman
Child Abuse and Neglect
Focus Committee
The Junior League of Billings

Beverly M. Gormley
645 O'Malley Drive
Billings, Montana, 59102
February 7, 1979

The Honorable Everett R. Lensink
Chairman, Senate Judiciary Committee
Senate Chambers, State Capitol
Helena, Montana, 59601

Dear Senator Lensink and Judiciary Committee Members:

I, Beverly M. Gormley, am in favor of Senate Bill No. 301 and ask that this position paper be entered into the record as personal testimony. My reasons for support include the following:

1. Senate Bill No. 301 strengthens the responsibility of necessary reporting in order to make sure reports are made before injuries reach tragic proportions.

Changing language to include suspect and harm vs. excessive injury or believe abused, increasing the list of those reporting, assuring full immunity, and imposing a penalty for failure to report all make earlier and more responsible reporting likely to occur.

2. Senate Bill No. 301 streamlines the reporting and investigative process in order to provide for the protection of children whose health and welfare are or may be in danger.

Requiring an investigative report within 60 days, supporting the use of photos and x-rays when necessary, and appointing a guardian ad litem will help minimize delay and speed up the crisis intervention process.

3. Senate Bill No. 301 promotes a total system of better service delivery from the initial report throughout the entire treatment process.

Encouraging the use of child protection teams, inter-agency cooperation requiring welfare workers to respond 24 hours a day, 7 days a week, and allowing homemaker placement in the homes will improve services and help preserve the totak family unit whenever possible.

I ask your support of this bill and thank you for taking the time to consider my testimony.

Sincerely yours,

Beverly M. Gormley
Beverly M. Gormley, Representative
Task Force on Child Abuse/Neglect

Exhibit E

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The parents, when confronted by Welfare, reacted in a very formal manner with a very formal letter which was to the effect that they would be willing to deal with Welfare if Welfare had any real proof of ~~the~~ ^{The} allegations. (All very "formally" angry and the "stiff upper lip" type of retaliation which here in Montana is not customary and could be misconstrued for guilt!)

For whatever reasons, the S.R. department did not answer the letter, and it was not until September when the child was entered into the kindergarten of their district school that the next "incident" occurred. So the story goes- the sheriff was told by someone in his office who had a little eleven year old sister who baby sat for the family that the family should be watched because they abuse their children. (I can't tell you the "coverup" story here because the local Sheriff, the Attorney General, the department of Social Rehabilitation child abuse officers, the school authorities, etc., somehow must have felt tongue-tied when the parents later approached them for more information to clear their reputation.) Anyhow- a deputy from the sheriff's office went to the school and told the principal and teacher to look out for evidence of child abuse on the kindergartener of this family. The teacher did as requested, noting bruises, and then by the end of the year came upon a scene in her room which convinced her that the deputy had been right, and she called the Welfare department and told them that the parents were abusers. (By the way, she also had not talked with or bothered to get to know the parents, and the "scene" involved a black eye, and she asked the child if his daddy had given it to him, and the little boy said, "yes", and so she too assumed.... !)

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Next, the welfare officer and the law officers tried to gain entry into the home of my friends, but were thwarted in their efforts by the mother who refused to let them enter. Then came the summons for them to appear in court to defend their rights to keep their child. My husband and I were witnesses at that trial, by the way, and were there to hear the judge dismiss the case and say that it should never have come to trial. He concluded that the welfare department and the defendants were possibly both at fault for their failure to communicate with each other.

If you have read this far and also see the implications of the Legislature allowing more power for Social Rehabilitation, I plead with you to read this or any bills like it which would facilitate same, change it or forget it until you come up with a better idea.

Sincerely,

Martha Anne Walker

(Mrs.) Martha Anne Walker

Spouse abuse issues for Legislature

The fact that Oregon, along with a handful of other states, has done away with marriage as a defense for rape was the most important information to come out of the celebrated trial between Greta and John Rideout in Salem, Ore. The trial focused attention on the issue of violence in marriages. It's an issue Montana legislators will be asked to deal with this session.

The 1977 Legislature requested a study of the problems and needs of battered spouses and their families. That study has been completed, and a state-wide Spouse Abuse Task Force formed last April has reviewed it. The task force has several proposals for the Legislature.

Because of the Oregon trial, the most public attention probably will go to the proposal to change Montana's rape law. The proposed change wouldn't make Montana law identical to the Oregon law; but it would amend state law so the charge of sexual assault and sexual intercourse without consent could include married people who have separated and are living

apart. Married couples living together would not be affected.

But other proposals in the package dealing with battered spouses deserve more attention. Those that come to mind are proposals to acquire statistics on battering and to change procedures dealing with temporary restraining orders.

An essential initial step for handling battered spouse problems is to learn how extensive the phenomenon is. That sounds elementary, but it's not easy to do now. No one knows — not law enforcement, social services or mental health agencies — how much spouse abuse there is in Montana. Those records that are kept on abuse are inadequate. Legislation is needed to assure the state will have some statistics to work with in the future.

A proposal concerning temporary restraining orders also deserves close consideration. Currently, a battering victim can get a temporary restraining order to keep the spouse from the home; but there is a catch. A restraining order is

available to a victim only upon the filing of another action, a criminal complaint or a petition for separation or dissolution of marriage.

The spouse abuse task force recommends legislation that would allow a victim to get a temporary restraining order independent of an action for divorce or separation. That makes sense. The emphasis thus would be placed on protection of the battering victim rather than on the break-up of a marriage.

Two other proposals the Legislature will be asked to consider are: permitting suits for damages resulting from physical and mental injury from battery by a spouse, and providing communities with counseling, shelter and education services for battered spouses. The services would be locally controlled and no state funding would be involved.

The Oregon couple's rape trial and their subsequent reconciliation make interesting reading. But attention in Montana now needs to turn to less dramatic stuff.

Violence continues among battered spouses

Editor's Note: These stories begin a series dealing with battered women. The subjects volunteered to talk about their experiences. Names have been withheld to insure the privacy of our subjects.

A fist moved slowly toward her face. Then a flash of light exploded before her eyes. Another did, and another and another. A burst of light followed each.

Splintered wood and clumped glass flying from somewhere above seemed to float about her head.

There was motion but there appeared none. Something seemed in the distance, blows landing but none were felt.

The 30-minute beating never as it were a brutal ballet, delicate and poised.

"It really happened last but a light came to go in slow-motion," said Mrs. X. "I thought I was in a dream."

"When I realized what was happening, I threw my arm over my face. I thought I heard a glassy creature but they were not. I just stood there. I honestly couldn't do a thing."

Unlike many battered wives, Mrs. X didn't fight back.

She'd wanted out of her troubled two-month marriage and asked her husband to leave. He bludgeoned her eyes, severely cut and bugged her nose, smashed a coffee table to bits and pitched a vase in her cooking nook. Before he storming out he slapped her, bleeding profusely, into the kitchen and forced her to give written consent to his taking certain household belongings.

After he left, she and her two young children threw a precious suitcase into their night clothes and so her room through cluttered closets to the neighbors.

Cracked walls and faded couch are the only remaining physical evidence of the battering. But Mrs. X is a persecutions, a character

degradation, and memories of the "hateful look" of her husband, the fear in the eyes of her children and the catty chatter of nurses outside her hospital room.

"She'll go back to him. They always do. I wonder what she did to deserve it," the nurses observed.

After three days in the hospital what particularly distressed her was the comment of her doctor: "You should go back to your husband. He didn't hurt you that bad. He could have beaten you much worse if he'd wanted to."

But she didn't wait around for the second beating. She brought assault charges against her husband and divorced him.

She learned there's a "social stigma" attached to being a battered spouse, even if one only briefly. "People think it's your fault, you deserved it," she said. "They categorize you as brainless and trashy and out for loud stamps, welfare — all you can get for nothing."

Hers is a local horror story — and typical. But there are others. Mrs. W was pushed down half a flight of stairs and then thrown over the balcony of a two-story apartment. Mrs. Y was thrown through a glass door. Both were repeatedly struck in the stomach while pregnant.

Some quick thinking by Mrs. Z saved herself from a shotgun death. She and her husband were quarreling. He located the weapon and started loading it.

"I wasn't afraid of dying," she said. "All I could do was picture my children coming in and seeing their mother's body splattered all over the room."

So she screamed to her husband: "If you're going to kill me, why don't you do it with your bare hands." He bent her into unconsciousness.

This kind of violence has been steadily on the rise for the past two years. It pervades all age, social, economic, racial and religious groups.

National statistics indicate one out of four women, whether legally married or not, are physically abused by their mates, according to Diana Mann, a Court of Conciliation counselor. The estimate rises to a third counting women verbally intimidated or threatened by pulled punches and clenched fists, she said.

The battered women interviewed had high school educations, were from middle-income homes, and ranged in age from 28 to 38. Their courtships were as short as one month to as long as a year. None was involved in a teen-age marriage. All expected of marriage what most people do.

They thought they knew the men they married and commonly described their mates as "kind, considerate and charming."

But after the wedding things changed.

As Mrs. X said, "He was totally selfless, a big buddy to my children. Then right after the marriage, it was like Jekyll and Hyde. The kids and I couldn't do anything right."

What causes the change?

For years common belief held that men were driven to such behavior by nagging women and they had a God-given right to discipline their spouses. Besides, it was thought women enjoyed the beatings — that's why they seldom left their husbands or pressed criminal charges against them. These reasonings are all or this, said Mann, yet difficult to eradicate.

The battered women staunchly added, "We're not masochists. That's ridiculous. Nobody likes to be hurt."

Child abuse seems at root of spouse abuse. Almost always one of the marriage partners has been abused, physically, mentally or both while growing up. Of the four women interviewed, two were abused as children; the others suspect their husbands were.

Mental cruelty had particular impact in the lives of the two women abused in childhood. As a teenager

one was tormented with parental gibes, "You're fat, ugly, stupid, good-for-absolutely nothing but sleeping around." The other heard, "You're neurotic," as a standby reply to her insecurities about maturing.

Consequently, the women felt intense fear and were married — more than once — to men who abused them and nourished that sense. They mistakenly believed themselves deserving of abuse and at fault, which are common reactions among battered women, according to Mann.

An emotional and psychological dependency on the abusive environment typically evolves, the counselor explained. It becomes an ingrained part of life, she said, but why? That's a puzzle being unraveled by battered women and professionals like Mann.

The women interviewed blamed, in part, sex stereotypes. "Like most women, I was taught to be dependent," said one. "I thought I couldn't take care of myself, after all I was just a woman. I needed a man and I panicked if I didn't have one."

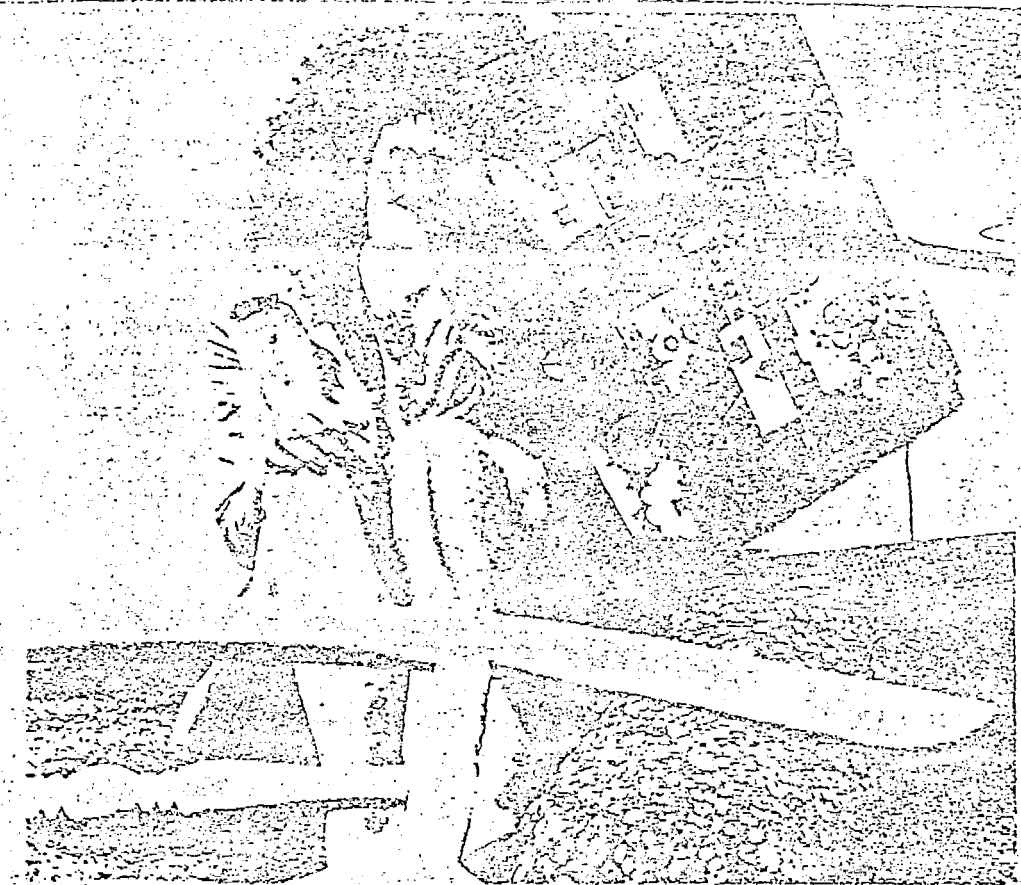
Another said, "Men feel like you're their property. You have no life outside the home. The world is to revolve around them."

Three of the women have escaped their abusive situations. Two of them claim they will never remarry. The other is uncertain.

The fourth is still freeing herself. She is recovering from recent hysterics, divorcing, going through therapy, fighting for custody of her children and singly supporting them. Stress has driven her to dream of revenge.

Slowly, weighing her words, she confessed, "I've started fantasizing about different ways I could get even — hurt my husband as he has hurt me. I feel if he ever came to my house without contacting me in advance I could take a gun and shoot him as he walked through the door."

Next: The battering cycle.



Batterer, also victim of parental abuse, found admission of problem shattering

The word "batterer" sticks in his craw — because he is one.

Feelings of guilt and shame shoot through him at its mention. He associates the label with lowlives like child molesters and with all he disrespects in the human character.

Admitting to being a wife-beater was as shattering to him as the confession of addiction is to an alcoholic.

He never pictures himself in the role. He's in his mid-thirties, educated, upper middle class, a business ace and a "liberated man," supporting equal rights and doing his share of domestic duties.

He was not caught up in the macho image of domination and aggression. And when he realized his problem, he sought therapy. These qualities make him atypical of the average batterer, professional counselors say.

What makes him typical is his background. He suffered severe whippings as a child and watched his mother beaten by his authoritarian father. He was his mother's soft shoulder and abhorred his father's use of violence to control the home. Even so, his father's nature crept out in him.

His second wife's strong, independent personality threw him for a loop. When they disagreed she stood up for herself whereas his first wife, whom he married but never abused, withdrew and dissolved into tears.

"The second wife had a temper and could unleash a verbal tirade sometimes filled with 'I hate yous.'"

He couldn't cope with an outburst. He'd grab her and shake her, pull her hair, bloody her nose. He'd become

petty, resorting to childish revenge like dumping cold water on her when she was bathing.

He felt "proud" after roughing her up, not because he'd effectively exerted authority, but because he'd demonstrated restraint. He never seriously injured her.

In a sad, hesitant voice, he explained, "I'd really been abused as a kid. One time I was beaten until blood ran down my leg. After I'd beat her up, I'd say to myself, I didn't abuse her. She doesn't know what real abuse is like."

"I'd compliment myself because I'd dealt out less punishment under similar circumstances than my father would have. I was treating her like a child. And spanking a child is an accepted behavior modification."

"I was trying to control her and not just with violence but with the threat of it."

Her threats of police, restraining orders, divorce "didn't make any difference" to him.

"I'd just get so darn mad I didn't care what was going on," he admitted readily. "I guess with someone you love you don't put up any protective barriers."

"I was being verbally attacked and it hurt. But just because someone is unquitting at you doesn't give you the right to smack them. I've got a tongue to use, too. If (the abuse) was not my wife's fault, it was mine."

He lost power over his own behavior and this seemed to bother him greatly.

"I don't want to be the way I was; I want to be in charge of myself," he

said as though issuing himself a command.

Through professional counseling, he's learning to "fight back verbally," to leave an argument for a few hours and cool off, and to take less personally his wife's attacks, now realizing they may stem from frustrations outside their relationship.

His self-image has been damaged but not destroyed. He regards himself as "basically kind, gentle and loving," effective at work and in most other areas of his life.

He sees both himself and his wife as victims, she of spouse abuse and he of child abuse and society's traditional definition of masculinity.

"Men have to realize their wives aren't the enemy," he said, growing a bit philosophical. "They have to stop seeing themselves as super-jock macho men playing at life like a football game. It's okay to clip an opponent but you don't spike a member of your own team and that's what a wife is."

"A husband and wife are like two plow horses. They have to pull together to get anywhere."

He's not sure how long his own "teard" will be pulling together.

"I've driven her away from me in some ways," he explained quietly.

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Police intervention no solution to abuse

The radio squeals out "family disturbance" and gives an address. With that, police are enroute to a front of the most unpredictable nature — the domestic squabble.

Officer Dan Ingersoll makes the ride once or twice a night on 40 others on the 3 p.m.-4 a.m. shift. Many, but not all, of the incidents involve spouse abuse.

A five-year man with the Great Falls Police Department, Ingersoll has been all over town on abuse cases, from the Country Club district in the lower southside. "The circumstances of each incident are never the same, he said, but he described a typical situation:

"The man is usually drunk. Sometimes the woman is too. Both are acting irrational. There are broken lamps, broken furniture. The woman may be crying.

"A lot of times the man would just as soon fight us. He tells us we have no right to be in his house. We're interfering in his life. But our right to be there is that someone called us."

Most times a neighbor or the woman calls in. But sometimes the callers are the couple's children and "that's the sad part," said Ingersoll, visibly touched by children that have to watch their parents "make fools of themselves."

Children are usually glad when police arrive. Ingersoll hears cries like, "Please don't let Daddy hurt Mommy" or "Mommy's drunk again and Daddy's mad."

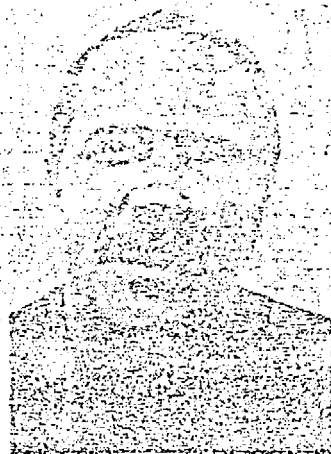
"Kids seem to know where the problem is, who's at fault," he signed.

He steers children away from the fight scene, comforting them as best he can. But like all officers he doesn't have much time for them because the adults require attention.

Unless there's a manpower shortage, two officers respond to a family disturbance. They separate the couple and hear out their complaints.

"We try to be friendly and help them rationalize their problems," Ingersoll said. "After a few minutes most of them cool down."

If one or both remains hostile, the officers suggest they separate for the night. If women have nowhere to go, they



Dan Ingersoll

and their children may be taken the Great Falls Mercy Home for Women and Children — an emergency housing facility created in spring 1977 and a godsend to police.

But some women — and occasionally a man — get a ride to the hospital.

Rarely do police make an arrest, although spouse abuse constitutes assault. Ingersoll's superior Lt. Tim Skinner explained why.

"If we arrest a husband that will probably intensify the couple's problems," he said. "The man might only be in jail overnight. He's got a job to go to in the morning and if he doesn't show up that may jeopardize the family income. Jail doesn't end the problem or the marriage. It can become just another wedge between the couple."

Besides, most husbands leave before the police come, Ingersoll said. In that event police explain to the wife how to make a complaint.

The woman must give her account in a sworn statement. Then the responding officers' reports are compared to hers in order to decide if a crime has been committed and probable cause exists for filing a complaint.

Most assaults are misdemeanors and complaints are filed in city court if police investigated the case. Serious assaults where life or permanent injury was threatened are felonies and complaints are filed with the county attorney.

"We advise women to wait two or three days before signing a complaint," Ingersoll said. "It gives them time to think it over. They often make up with the guy and back out."

Financial dependency often figures into that decision, Skinner noted.

Police can sign a complaint against the husband if he's still around when they arrive and if it's apparent a battering has occurred. Red marks on a woman's throat or a man's bruised knuckles are some of the telltale signs, Ingersoll said, adding that at times the man confesses.

If a second beating occurs the same night, an arrest is usually made, he said.

Police have some regular clients whose problems and responses to them seem never-changing. And a number of husband-wife disputes are purely "screaming matches," between couples 20-25, Skinner said. If older couples are fighting, alcohol is usually a factor, he commented.

There were 49 family disturbances and 40 reported assaults in September, probably only one-twentieth of those that took place, the lieutenant said. He estimated more than half of the incidents involved spouse abuse.

Family disturbances are a risky, sometimes deadly business for police. They face assault, even by the woman, who may suddenly side with her husband. More officers are killed handling domestic cases than any other.

Domestic violence is costly in time and money. Skinner said an officer spends an average of 32 minutes, including paperwork, on a domestic case. And, he said, the city spends from \$24-300 per incident. (This includes the officers' salaries, equipment, gasoline, etc. and overtime and overtime station expenses.)

And police have no solutions. "We're a crisis intervention force," Skinner said. "We resolve the problem only temporarily."

Counseling services are the answer, the policemen said. They suggested such measures as court-mandated counseling for offenders and a creation of teams of professional counselors who could take over when police leave the scene.

Cover feature stories

by SALLY SAUNDERS

Men occasional abuse victims also, police say

Men are battering victims in only about 1 percent of the reported spouse abuse cases, according to local police.

Occasionally, a small man may be knocked around by a large, domineering woman. But more commonly some trouble in the relationship, perhaps abuse by the man, causes the woman to retaliate. And her response usually disables the man.

"The woman will wait her chance and maybe hit the guy over the head with something and knock him out," said Lt. Tim Skinner. "When they go, they go all the way."

Patrolman Dan Ingersoll related an incident that seems right out of a cartoon.

A husband came home drunk late one night and he and his wife quarreled over his condition. She shoved him outside and locked the door behind him. He was tired and wanted to go to bed so he decided to crawl in a bedroom window.

But she was waiting for him, rolling pin in hand. As he stuck his head inside, down came the rolling pin, splitting his head open. He spent the night in the hospital.

GET Jan. 9, 1979

Center serves as a place to go for wives who've been beaten

By SALLY SAUNDERS
Tribune Staff Writer

Where to go? That's the thought always churning in the minds of battered women deliberating escape from their situations.

Going home isn't as easy as it perhaps once was. The mobility of the population has spread families farther apart — in miles and sometimes in attachment. And the welcome mat may just not be out.

Besides, leaving is difficult. There are emotional ties with the abusive mate. After all, emotion helped bring the man and woman together.

Third in a series

But the greater consideration is financial security, particularly if children are involved. How will I support my family? That's a monumental question the battered woman must resolve. And it usually binds her to more abuse.

A local battered woman endured six months of mental torment after she'd privately made a decision to leave her husband. She had to wait for her injuries to heal before finding work. Even with her job she needed food stamps to help support her children. She'd never been on welfare before and the experience was humbling.

Another battered wife who was divorced is just eking out a living for her family despite a fairly well paying job. Her husband left her with several debts, including court costs for the divorce and medical expenses that he'd been ordered to pay.

She's eligible for welfare but refused it. "I wasn't raised that way," she said. "I'm a product of the work ethic."

Tales like this are told over and

over at Great Falls Mercy Home For Women and Children — an emergency housing facility for battered and transient women without funds.

At the end of September the shelter had cared for 157 women (only a few were transients) and 103 children since its opening in spring 1977. By that time 106 families, most of them local, had been served.

One battered wife claimed, "I'd be dead if it weren't for that place."

"We never tell women how to solve their problems," said Caryl Borchers, president of Mercy Home board of directors. "We help them get counseling, find jobs, provide some transportation and a safe place to stay."

The shelter buys time for troubled women whatever their age or marital status. The length of stay is usually a few days, but some have stayed three or four weeks.

Those who need help can reach the shelter by calling the Crisis and Information Center, which is listed in the telephone directory. Mercy Home has an unpublished number to insure its clients' privacy and safety, Borchers said.

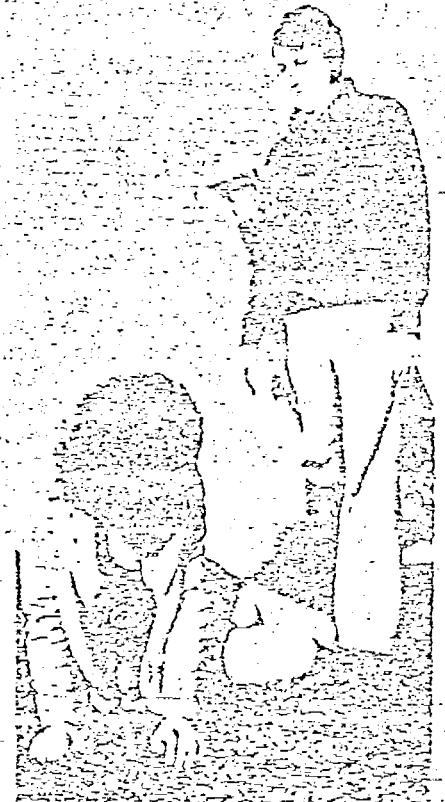
The shelter was the first of its kind in the state. Missoula has since established one and Billings, Butte, Miles City and Glasgow have plans for shelters or "safe homes," private residences where abused women can stay, Borchers said. Butte, she noted, has had safe homes for five years.

Mercy Home is one of 50 shelters across the nation, Borchers said, adding that a number of requests come in from other communities asking how it operates and how it got started.

The shelter came about as the result of community effort. The project was launched with a \$5,000 grant from the St. Vincent dePaul Society and support from 22 community service agencies. Some of the initial funding

also came from city churches, Borchers said, and although Mercy Home has become a United Way agency, church donations are still a source of revenue.

A housemother and relief staff are salaried but volunteers have been Mercy Home's staple. As of the end of September, volunteers had logged 21,000 hours.



Facilities such as the Salvation Army and Rescue Mission could take care of men down on their luck, Borchers said, but there was no place for transient or abused women, particularly those with children.

The shelter has filled that gap in community services.

Some battered women say

Legal system unsympathetic

By SALLY SALTZBERG
Times Staff Writer

To battered women the legal system seems only salt on already painful wounds.

Women complain bitterly about difficulty and delays in securing restraining orders and pressing assault charges, not to mention the occasional indifference of police and sheriff's deputies.

But a number of women perceive their worst enemy to be the county attorney's office and are downright hostile when describing their dealings there.

Fourth in a series

County Attorney J. Fred Bourdeau seemed amused when these feelings were reported to him. "I just can't believe that," he said.

"One woman referred to Bourdeau as 'Freedom Fred,' a tag she heard him called around the courthouse by those disenchanted with his effectiveness as a prosecutor.

Bourdeau countered the label by saying, "I've never been accused of being that liberal. There's 150 men in Deer Lodge who wouldn't agree with her."

But his office is no laughing matter to the women.

"I took a cab straight from the hospital to the county attorney's to press charges, walked in with my arm in a sling and they wouldn't even let me in the door," said one woman, bursting with anger.

Another woman, almost as angry, said she went to the county office three days after a beating for which her husband was arrested. She went to get her restraining order reinforced and to press bigamy charges.

"I talked with a deputy attorney and at first he was righteously indignant," she recalled. "He told me he'd get me a divorce and make my husband pay for my medical expenses. Then he sent me out to get a copy of my marriage certificate. When I came back 20 minutes later, it was like Jekyll and Hyde.

"The deputy said he'd talked to someone higher up and was told not to press bigamy charges because the paper would make a circus out of it.

"His final words to me were, 'The next time you see your husband tell him to come in and see me.' Well that's like walking up to a wolf and saying, 'Don't bite anyone.'"

With aid of private attorneys, the women got restraining orders issued by district judges.

One of the women waited three weeks before the order was served on her husband and ended up having to locate him herself. She is now divorced but the other woman's decree is still pending.

A third battered woman blames three of her beatings on the county attorney's office for delaying restraining orders and on the courts for failing to back up the orders once they were in effect.

Her husband was eventually brought up on assault charges, pleaded not guilty and was released on his own recognizance. She's angered by the small penalty, particularly because her ex-husband remarried soon after the divorce and subsequently seriously beat a second wife.

Bourdeau found the situations described by the women "hard to believe," but said he was "personally

appalled" that had occurred.

"I've been involved almost in this kind of case," he said.

The county attorney was handicapped in dealing with criminals because the women's names could not be revealed in order to protect their privacy. And in part, the women wished to be anonymous because they feared reprisal from Bourdeau's office should they have further involvement with it.

Abuse cases are treated like other assault cases, said the county attorney, who has total discretion as to which cases are prosecuted. His office handles felony and misdemeanor assaults under jurisdiction of the sheriff's department. (Misdemeanor assaults under police authority are handled in city court.)

Before a complaint is filed an investigation is made to determine if a crime was committed and if so, its severity, he said. Usually lawmen have completed the investigation before the case reaches his office.

The bulk of an assault case rests on law enforcement findings, Bourdeau said, although social service agencies and medical reports are sometimes sources of information. Also considered is the complaining spouse's account of the incident given in a sworn statement.

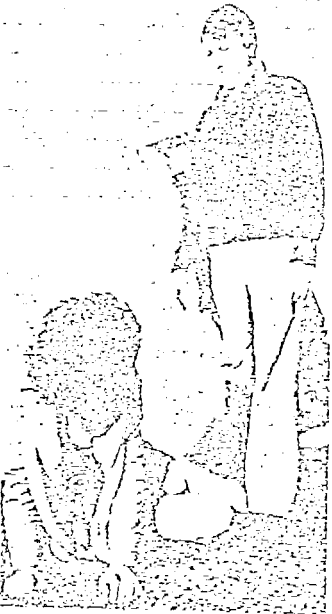
"And there's always the other side of the story," Bourdeau said in noting his staff tries to talk with the accused man before a complaint is filed. Some women come in "angry and upset," he said, and may just be looking for revenge.

Usually the county attorney's office waits 24 to 48 hours before filing a complaint. "This allows a cooling off period," the county attorney explained. "It gives the woman time to

evaluate her situation."

And women frequently "back down. That's the biggest problem we have with prosecutions," Bourdeau pointed out. Four or five women have dropped charges within the past few months, he noted.

Bourdeau said that in many instances he's readily agreeable to a woman's change of mind — provided the assault was not serious. In those cases, dropping charges may mean preservation of a marriage or a family, which should be encouraged, he maintained.



Battered woman says she battles lawyers too

Her voice sounded weary, tired of struggle. Emotion barely allowed her latest news to come out: "My lawyer is threatening to sue me."

She's been fighting six months to divorce her abusive husband. Indifferent attorneys, unexplained delays and broken restraining orders have been common course.

Although she has children, her attorney didn't ask for temporary child support. Her injuries limit the work she can do and forced her into a low-paying job. Food stamps must supplement her income.

She's endured mental harassment from her husband. He's appeared unannounced at her home and in her hospital room, violating restraining orders. She still fears for her safety.

All this has put her mental health in such a precarious state she's had to be hospitalized periodically to relax.

Her case began after a beating last spring. Because of the inaction of the county attorney's office, she had to hire a private attorney to get a restraining order against her husband.

She wanted a divorce but her husband's last-minute pleas caused her to balk. Then came two more serious beatings. They convinced her to go forward.

But her attorney was out of town so

another was hired. An immediate restraining order was issued and divorce proceedings were begun. Aside from the restraining order violations being officially noted for her file, "nothing much else happened."

She claimed money is the reason. "I don't have enough," she moaned.

She paid her attorney a few hundred dollars; the court ordered her husband to pay about the same amount. But she didn't have enough for the several hundred dollars remaining on her tab.

Legal aid couldn't help. "It's federally funded and can't accept any payment," she explained. "And with me, the court could order my husband to pay divorce costs."

An installment plan acceptable to her attorney and affordable for her couldn't be worked out. He threatened suit; she started looking for another attorney.

"Too busy, sorry" became a familiar refrain and not always a legitimate one, she believes. "Lawyers think first of their retainer," she claimed, adding that one even asked what kind of car she drove.

After a half dozen or so turn-downs, she finally got a lawyer. But she still believes she got the runaround and feels she's not been the only one.

Spouse abuse can hurt the children, too

SALLY SAUNDERS

Bureau Staff Writer

Five-year-old Todd wasn't puzzled by the bruises and bandages on his mother's head nor by the cast on her arm. He'd heard the argument, watched his stepfather beat her up. In that matter, he'd seen his own mother do the same.

The day his mother came home from the hospital, he ran to her asking, "Mommy, why didn't you stay with my Daddy? He only gave you black eyes."

Questions like that gnaw away at battered women with children. The mothers wonder how their children are affected by a violent home life.

nal in a series

What scares them is the connection between a childhood spent in an abusive environment and spouse abuse. Most always either the battered woman or the batterer has experienced or witnessed abuse as a child. Will my son grow up to be a batterer or will he hate men? Will my

daughter become a battered wife?

"My son makes cracks about men," said a local battered wife. "He's cynical. Yet for all the bad things he's seen, he's still a pretty good little guy, pretty compassionate."

Another pre-school boy felt guilty because he couldn't protect his mother. He's frightened of all men but most of all his stepfather, from whom his mother is now separated.

"He wakes up in the middle of the night with fright in his eyes," his mother related. "He keeps screaming that his stepfather is in the house...I could just die when it happens."

The boy is undergoing therapy and his outlook seems to be improving. As his mother said, "We've established a good verbal rapport. He's open and honest about what he feels and sees me as a person with feelings and problems."

"He comes to me when I'm down and says, 'Mom, don't cry, don't be sad.' And I tell him I'll work it out."

A local battered woman gave up custody of her son because she couldn't stop abusing him.

"I blamed him for everything," she admitted. "I'd tell myself if it weren't for him, my life would be better. His father abused me and I hated him. So I hated his son."

The boy is now thriving in a foster home and mother and son have a "loving relationship," she said.

Still residing with her is a daughter from another marriage. "I've turned her into an independent person," the woman continued. "I abused her a couple times but nothing like my son. I loved her father even though he abused me. So I loved her and was more attentive to her from the start."

This mother thinks her problems are resolved.

Yet she well remembers the abusive environment that marked her childhood. She vowed never to allow a man to abuse her as her father abused her mother. To insure her pledge, she tried to dominate her husbands. That didn't work for her; she worries if her daughter may try something similar.

Besides her broken self-promise is

a wealth of leftover bitterness. "I'm extremely bitter about my childhood, more so than about being a battered wife," she said. "All us kids were abused along with my mother."

Now this battered woman wonders which will be the greater in her own children's hearts — bitterness or forgiveness.



*Committee: 2/23/79
original not to table on 9th
for Van Valkenburg note 7th
ER submit*

DISPOSITION OF SENATE BILL 420:

Senator Turnage moved that this bill do not pass. He withdrew this motion and moved that this bill be tabled. The motion carried with Senators Van Valkenburg, Healy, Anderson and Towe voting no. Senator Turnage moved that a joint resolution be drafted to study this matter during the interim and that this resolution should be directed to the Judiciary Committee. The motion carried unanimously.

DISPOSITION OF SENATE BILL 482:

Joan Mayer from the Legislative Council offered some amendments that had been proposed in connection with this bill, which is an act to provide for seizure and forfeiture of controlled substances and implements and conveyances used in dangerous drug violations. There was a motion to do pass. The motion failed. (See roll call vote.)

Senator Turnage moved that this bill be tabled. The motion carried. Senator Van Valkenburg and Senator Anderson were absent during this vote.

DISPOSITION OF SENATE BILL 301:

Joan Mayer from the Legislative Council offered amendments to this bill, which is an act to generally revise the state laws relating to child abuse, neglect and dependency. (See amendments attached.)

Senator Towe moved amendment #2, 3 and 4. The motion carried unanimously. Senator Towe moved to amend by accepting amendment #5. The motion carried unanimously. Senator Towe moved #16 and this motion carried unanimously.

Senator Towe moved that on page 7, the bill be amended on lines 17, 18, 19 by striking these lines in subsection (2). The motion carried unanimously.

Senator Towe moved that amendment #11 be adopted and further amend by striking everything else in section 6 following that amendment. The motion carried unanimously.

Senator Towe moved that amendment #13 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #14 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #17 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #18 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #19 be adopted. The motion carried unanimously.

Senator Brown moved the withdrawal of amendment #19. The motion carried unanimously.

The motion was made on page 14, line 7, following "privilege" that the words "with relation to examination or treatment of the child" be inserted. The motion carried unanimously.

Senator Towe moved that amendment #20 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #21 be adopted. The motion carried unanimously.

Senator Towe moved that amendments #22 and #23 be adopted. The motion carried unanimously.

Senator Towe moved that on page 3, line 15, following line 15 that the material on page 18, lines 13 through 19 be inserted on page 3, line 15. The motion carried unanimously.

Senator Towe moved that on page 12, line 21, after the word, "and" the bill be amended to read "may provide protective services to". The motion carried unanimously.

Senator Turnage moved that on page 16, line 18, strike "the department". The motion carried unanimously.

Senator Lensink moved that the bill do pass, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 386:

This is an act to disapprove the Supreme Court's rules on disqualification and substitution of judges and to adopt the federal rule.

Senator Brown suggested that the bill be amended on page 1, line 21, after "party" insert "and lawyer representing party" and on page 1, line 23, strike "served as a lawyer and insert "representing a party involved" and on page 1, line 25, strike "a lawyer" and insert "counsel for party involved"; and on page 2, line 2, strike "concerning it" and insert "on behalf of a party in any prior proceeding" and on page 2, after line 2, (c) he has made statements publicly or privately" and he suggested that this bill be applied to civil cases only.

TO: SENATE JUDICIARY COMMITTEE STAFF
FROM: BURT ANLIN, SRS/DLA

RE: SB 301 AMENDMENTS

44, line 21.
ing: "against the child"
4, line 2
1. Page 3, line 14.
Following: "by" ~~_____~~
Insert: "of who fails to thrive because of"

5, line 8.
ing: "or"
ut: "or"
5. Page 5, line 15.
Following: "risk"
Strike: "or"
Insert: "of"

6. Page 5, line 24 through line 3 on page 6.
Following: "an" on line 24
Strike: the remainder of line 24 ~~_____~~ through "culture" on line 3, page 6
~~_____~~
Insert: "identifiable and substantial impairment of the child's intellectual or psychological functioning"

7. Page 7, line 10.
Following: "parents"
Insert: "or guardians"

8. Page 7 line 12.
Following: "parents"
~~XXXXXXXXXXXXXXXXXXXX~~
Strike: "of children"
Insert: "or guardian of a child"

OK 9. Page 7, line 16.
Following: "of"
Strike: "such child or children"
Insert: "the child"

10. Page 7, line 18.
Following: ~~_____~~ "home,"
Insert: "or guardian"

OK 11. Page 8, lines 18 and 19.
Following: "shall" on line 18
Strike: "serve at the invitation of the coordinator"
Insert: "include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney"

12. Page 8, line 19.
Following: "and"
Strike: "shall"
Insert: "may"

13. Page 9, line 12.
Following: "affiliate,"
Strike: "who"
Insert: "which"

~~_____~~
when a child is placed in a
(foster home, child care agency, or priv
treatment facility)

~~CONFIDENTIAL - NO SB 301 CONTINUED~~

Insert: "the Department of Social and Rehabilitation Services shall direct"

Insert 1. "It"

Strike: "thereof"

Strike: "or facts"

Insert: "physician-patient"

~~Insert:~~ "or rule against disclosure."

Price: "10"

Strike lines 13 through 19 in their entirety

* Can a department direct a county attorney to investigate?
a peace officer?

25. Page 18, line 25.
Following: "sections"
Strike: "4 and"
Following: "5"
Insert: "and 6"

26. Page 19, line 2.
Following: "sections"
Strike: "4 and"
Following: "5"
Insert: "and 6"

STANDING COMMITTEE REPORT

February 19, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 301

Respectfully report as follows: That Senate Bill No. 301, introduced bill, be amended to read as follows:

1. Title, line 9.
Following: "41-3-301,"
Strike: "AND"
Following: "41-3-302,"
Insert: "AND 41-4-102,"

2. Page 3, line 15.
Following: "welfare."
Insert: "A parent or other person responsible for a child's care who as a result of the legitimate practice of his religious beliefs does not provide specified medical treatment for a child is not considered negligent for that reason alone. However, when the child's health requires it, the court may order that medical services be provided to the child pursuant to 41-3-403."

3. Page 4, line 21.
Following: "against the child"
Strike: "1"

ENCLOSURE

(continued)

107193

4. Page 5, line 1.

Following: ";"

Insert: "or"

5. Page 5, lines 5 through 9.

Following: "future" on line 5

Strike: remainder of line 5 through "court" on line 9

6. Page 5, line 15.

Following: "risk"

Strike: "or"

Insert: "of"

7. Page 5, line 24 through line 3 on page 6.

Following: "an" on line 24

Strike: the remainder of line 24 through "culture" on line 3, page 6

Insert: "identifiable and substantial impairment of the child's intellectual or psychological functioning"

8. Page 7, line 11.

Strike: "(1)"

9. Page 7, lines 17 through 21.

Strike: lines 17 through 21 in their entirety

10. Page 8, lines 18 through 21.

Following: "shall" on line 18

Strike: remainder of line 18 through "agencies" on line 21

Insert: "include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney"

11. Page 9, line 12.

Following: "affiliate,"

Strike: "who"

Insert: "which"

12. Page 11, line 7.

Following: "abuse"

Strike: "and"

Insert: "or"

13. Page 12, line 21.

Following: "and"

Insert: "may provide protective services to"

14. Page 14, line 1.

Following: "or"

Strike: "any"

Insert: "its"

Following: "contents"

Strike: "thereof"

(continued)

y/c

15. Page 14, line 3.
Following: line 2
Strike: "thereof"
Following: "fact"
Strike: "or facts"

16. Page 14, lines 7 through 9.
Following: "privilege" on line 7
Strike: remainder of line 7 through "26-1-303" on line 9
Insert: "related to the examination or treatment of the child"

17. Page 14, line 16.
Following: "suffered"
Strike: "trauma"
Insert: "abuse"

18. Page 16, lines 18 through 20.
Following: "action." on line 18
Strike: remainder of line 18 through line 20

19. Page 18, line 5.
Strike: "(1)"

20. Page 18, lines 9 through 11.
Following: line 8
Strike: lines 9 and 10 in their entirety through "be" on line 11

21. Page 18, lines 13 through 19.
Strike: lines 13 through 19 in their entirety

22. Page 18, line 25.
Following: "sections"
Strike: "4 and"
Following: "5"
Insert: "and 6"

23. Page 19, line 2.
Following: "sections"
Strike: "4 and"
Following: "5"
Insert: "and 6"

24. Page 19.
Following: line 10
Insert: "Section 19. Section 41-4-102, MCA, is amended to read:
"41-4-102. Financial responsibility. Financial responsibility for a
child placed pursuant to the provisions of the Interstate Compact on
the Placement of Children shall be determined in accordance with the
provisions of Article V thereof in the first instance. However, in the
event of partial or complete default of performance thereunder, the
provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforc
ment of Support Act) and 41-3-104, 41-3-195(2), 41-3-404, and 41-3-405
also may be invoked."
And, as so amended,

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 301	revise - child abuse, neglect, etc.	2/27	Lensink	Monday /12	as amended be concurred	3/17
SB 348	provide for damages in wrongful death actions	2/27	Valkenburg	Friday /9	as amended not concurred	3/16
SB 386	disapprove supreme court's rules on judges	2/27	Blaylock	Tues. /13	as amended not concurred	3/14
SB 393	revise - laws relating to mentally ill, etc.	2/27	Towe	Monday /12	as amended be concurred	3/23
SB 409	revising - assaults occurring between spouses,	2/27	Regan	Monday /12	as amended be concurred	3/14
SB 476	license persons - lie detectors, forensic polygraphs, etc.	2/27	Valkenburg	Tues. /13	not concurred	3/14

MARTHA ADRIAN: I would like to stress to you the critical nature of this. 1/3 of my clients come into my office and they disclose to me acts of violence by their husbands. I think one of the biggest things that we are dealing with is that people have to regain control over their lives. Before they had little recourse. I would like to stress within the bill sexual intercourse without consent. Currently you have to start the divorce proceedings before you have any protection. I would like also for the law to respect the decision that when a woman leaves she has withdrawn her consent for intercourse.

JEANE ADAMS: Mercy Home, Great Falls. She read statistics on the Mercy Home. We are working state-wide to take people out of crisis situations and give them time to work out their problems. Copies of letters were presented, exhibits #1 and #2.

CAROL MITCHELL: Senate Bill 243 is providing the temporary restraining order that we need. It is only when someone intentionally acts to hurt.

REPRESENTATIVE KEEDY: He asked about the amendment on page 3. I would like an explanation as to how that change was made.

CAROL MITCHELL: I was not there.

SENATOR LENSINK: We thought it opened up the law a little too far.

SENATOR TOWE: We were having trouble with the definition of separation.

CAROL MITCHELL: The prosecution will look very carefully at that.

There was no other discussion and the hearing closed on Senate Bill 409.

SENATE BILL NO. 301: Senator Lensink. This is another area of family violence. This adds some language to better protect the child. It is from child abuse that much of the criminal element comes. He gave some illustrations as to how it will shift emphasis, on page 2.

DR. JEFF STRICKLER: Governors Task Force and American Academy of Pediatrics, Helena. I would urge you to pass this bill. I look at child abuse as a common problem. The bill would help attorneys in their deliberations on the handling of such cases. The County Attorney has some amendments. Basically

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we are defining "failure to provide and failure to thrive". We have objections to dropping this out of the bill, page 14. The Senate scratched all of this section, the exclusion. He discussed the court hearings at some length.

KAREN TOWNSEND:

Missoula, Deputy County Attorney. She talked about the amendments, and her job working with young children. She talked about the Governors Task Force and the work they had done. We have a few changes that we would like to suggest, about religious beliefs, and getting a court order to provide health care, such as transfusions. She explained a case she had worked on and then gave another example of a case in which the child had highline membrane disease. We were able to get a court order to help that child. The Task Force did not allow for parents to be prosecuted. That language might belong in the criminal code and not in the civil code. The sentence, failure to thrive, this is intended to broaden that kind of a category. The question of privilege, there is a duty to report. My concern is that it has to go to court and if I can't put the expert on the stand then I cannot prove my case. The only time that should apply is the client privilege.

JIM MALLARD:

Montana Coalition of Human Services. He passed a copy of a letter to the committee, exhibit #3.

MR. HANSON:

I am here in support for the developmentally disabled.

LYLE EGGUM:

I support the bill.

NORMA VESTRE:

SRS. I have written testimony and my main thrust is to preserve family unity. Exhibit #4.

TOM HONZEL:

County Attorneys Association. We support this bill. He discussed the privilege briefly.

OPPONENT, W. D. HUTCHISON:

It strengthens the ability of the Welfare Department, and makes it too easy to remove children from the family unit. He talked about the amendment that was passed out. I think any doctor could tell you about the trauma of being removed from the family. I submit that this bill could cause more long-term harm than it will prevent. On page 3, line 6, the policy section gives gives you what I have just talked about. It is in direct conflict with a prior policy stated on page 2, line 18. On page 5, lines 20 and 22, it would probably have no medical meaning. It is too broad a definition. On page 6, line 22, he talked about the youth, too broad, and I would submit that it is not a proper way to remove a child. On page 8, child protection teams, I don't like

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that. On page 12, should be informed of the legal rights, and on page 13, lines 6 to 11, it is our position that this standard for protective services makes no sense. On page 15 and 16, section 12, it is always our rule to protect the natural parents and if we were excluded from the records that would greatly hinder our investigation. We would encourage the privison in section 15.

SENATOR LENSINK: The wisdom of having a bill like this is where to draw the line. I would like to comment on the amendments. It reflects some differences in the task force.

AMENDMENTS, EXHIBIT #5

REPRESENTATIVE UHDE: I wonder about the records.

REPRESENTATIVE ROTH: When did child abuse first become noticed and the pediatrician said, in the 60's, because of increased medical attention.

REPRESENTATIVE EUDAILY: Asked about the top of page 2, does this bill now meet these requirements.

MR. LENSINK: Yes it does.

REPRESENTATIVE KEMMIS: He questioned the second amendment, the failure to thrive.

KAREN TOWNSEND: What we concerned about doing was to make it as broad as possible without wiping out the old statute. Representative Kemmis offered an alternate amendment.

REPRESENTATIVE SCULLY: I am concerned about the necessary grounds available under this bill for the removal of the child. We receive anonymous calls into the department and sooner or later you end up with a fact sheet with none of the report verified. I can give you specific instances.

KAREN TOWNSEND: I think the definitional requirements will tighten that. At the hearing you have to have substantial risk.

REPRESENTATIVE SCULLY: On page 17, I would amend that definition, "danger of harm, from violence or serious injury". Miss Townsend commented that harm is defined earlier in the statutes. Whereupon Mr. Scully said, you have a definition of threatened harm. Miss Townsend said to look on page 4 at the bottom.

There was no other discussion and the hearing closed on Senate Bill 301.

SENATE BILL NO. 271: Representative Keyser moved the amendments as presented. The motion carried with Representative Holmes and Uhde voting "no". Representative Eudaily moved to amend page 10, line 22. General discussion followed. The comment was made that this does not prevent other records from being kept which do contain prior criminal record information. Discussion about this. Representative Eudaily moved to strike "in addition to any other records". The motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Uhde will carry on the floor.

SENATE BILL NO. 301: Representative Curtiss moved the amendments. It was found that all of the members did not have copies. It was decided to pass for the day and get a copy of the amendments for every member, since they are quite lengthy.

SENATE BILL NO. 404: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SENATE BILL NO. 431: Representative Lory moved to amend page 2, line 1, by striking "no" and inserting "whenever notice is required, no". The motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". Representative Curtiss will carry on the floor.

SENATE BILL NO. 468: Representative Holmes moved amendment #1 as presented to the committee. The motion carried with the vote unanimous. Representative Kemmis moved amendments #2 and 3. He discussed his feeling on them and explained what they would do. The motion carried with the vote unanimous. Representative Lory moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SJR 27: Representative Conroy moved "be concurred in". The motion carried with the vote unanimous. Representative Conroy will carry.

SENATE BILL NO. 482: Representative Uhde moved to amend page 1, line 4 by striking 1 kilogram and inserting 250 grams. There was considerable discussion pro and con whether this was the right amount for it to be changed to. The words would have to be amended on page 3, line 8 also. It was decided that this was the right amount and the motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". The motion carried with Representatives Kemmis and Holmes voting "no". Representative Curtiss will carry on the floor.

SENATE BILL NO. 491: Representative Lory moved "be concurred in". The motion carried with Representative Keyser voting "no". Representative Seifert will carry.

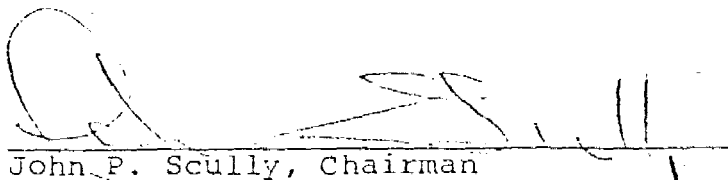
SENATE BILL NO. 481: Representative Keyser moved "be concurred in". The members discussed whether section 16 should be reinserted. Representative Holmes moved to do so. The motion carried with the vote unanimous.

Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Lory will carry on the floor.

SENATE BILL NO. 397: It was decided to hold this bill until a later date.

SENATE BILL NO. 301: Prepared amendments were presented to the committee and the staff attorney, Larry Weinberg, explained them. Representative Keyser moved the adoption of the amendments. The motion carried with the vote unanimous. Representative Rosenthal moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Roth will carry on the floor.

There was no further business to come before the committee at this time and the meeting adjourned at 11:00 a.m.


John P. Scully, Chairman

SENATE BILL NO. 301

INTRODUCED BY LENSINK, REGAN, ANDERSON, JERGESON, S. BROWN

BY REQUEST OF

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE STATE LAWS RELATING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY; AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-104, ~~41-3-105,~~ 41-3-201 THROUGH 41-3-205, 41-3-301, AND 41-3-302, ~~41-3-404,~~ AND ~~41-4-102,~~ MCA."

WHEREAS, Governor Judge appointed a task force to recommend ways in which services to families in which abuse and neglect are occurring could be improved; and

WHEREAS, the task force recognizes that the most crucial actions toward improving services to families must be taken by the local community; and

WHEREAS, the task force recognizes that child abuse and neglect is a multifaceted problem and that no one agency or discipline, by itself, has the resources or perspective to resolve or contain the problem; and

WHEREAS, the task force has heard testimony from numerous individuals, legislative staff, and other persons who deal with abused and neglected children and their families; and

WHEREAS, existing child abuse and neglect laws do not meet requirements allowing Montana to qualify for federal grants under Public Law 93-247.

THEREFORE, it is the intent of this bill to address the problems facing the children, families, and communities of this state regarding child abuse and neglect.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may ~~be~~ adversely affected and further threatened by the conduct of those responsible for their care and protection. It is

1 Intended that the mandatory reporting of such cases by
2 professional people and other community members to the
3 appropriate authority will cause the protective services of
4 the state to seek to prevent further abuses, protect and
5 enhance the welfare of these children, and preserve family
6 life wherever possible appropriate."

7 Section 2. Section 41-3-102, MCA, is amended to read:

8 "41-3-102. Definitions. As used in this chapter, the
9 following definitions apply:

10 (1) "Child" or "youth" ~~for purposes of this chapter~~
11 means any person under 18 years of age.

12 (2) "Abuse" ~~or "neglect"~~ means: An "abused or
13 neglected child" means a child whose normal physical or
14 mental health or welfare is harmed or threatened with harm
15 by the acts or omissions of his parent or other person
16 responsible for his welfare. A PARENT OR OTHER PERSON
17 RESPONSIBLE FOR A CHILD'S CARE WHO AS A RESULT OF THE
18 LEGITIMATE PRACTICE OF HIS RELIGIOUS BELIEFS DOES NOT
19 PROVIDE SPECIFIED MEDICAL TREATMENT FOR A CHILD IS NOT
20 CONSIDERED NEGLIGENT FOR THAT REASON ALONE. HOWEVER, WHEN
21 THE CHILD'S HEALTH REQUIRES IT, THE COURT MAY ORDER THAT
22 MEDICAL SERVICES BE PROVIDED TO THE CHILD PURSUANT TO
23 41-3-103.

24 ~~(a) the commission or omission of any act or acts~~
25 ~~which materially affect the normal physical or emotional~~

1 ~~development of a youth. Any excessive physical injury~~
2 ~~sexual assault or failure to thrive taking into account~~
3 ~~the age and medical history of the youth shall be presumed~~
4 ~~to be nonaccidental and to materially affect the normal~~
5 ~~development of the youth.~~

6 ~~(b) the commission or omission of any act or acts by~~
7 ~~any person in the status of parent, guardian, or custodian~~
8 ~~who thereby and by reason of physical or mental incapacity~~
9 ~~or other cause refuses or, with state and private aid and~~
10 ~~assistance, is unable to discharge the duties and~~
11 ~~responsibilities for proper and necessary subsistence~~
12 ~~education, medical, or any other care necessary for the~~
13 ~~youth's physical, moral, and emotional well-being.~~

14 (3) ~~"Dependent youth" means a youth who is abandoned~~
15 ~~dependent upon the public for support, destitute, without~~
16 ~~parents or guardian or under the care and supervision of a~~
17 ~~suitable adult or who has no proper guidance to provide for~~
18 ~~his necessary physical, moral, and emotional well-being. A~~
19 ~~child may be considered dependent and legal custody~~
20 ~~transferred to a licensed agency if the parent or parents~~
21 ~~voluntarily relinquish custody of the child. "Harm to a~~
22 child's health or welfare" means the harm that occurs
23 whenever the parent or other person responsible for the
24 child's welfare:

25 (a) inflicts or allows to be inflicted upon the child

1 physical or mental injury, including injuries sustained as a
2 result of excessive corporal punishment;

3 (b) commits or allows to be committed a sexual assault
4 against the child; or exploits the child or allows the child
5 to be exploited for sexual purposes;

6 (c) CAUSES FAILURE TO THRIVE OR OTHERWISE fails to
7 supply the child with adequate food; OR FAILS TO SUPPLY
8 clothing, shelter, education, or health care, though
9 financially able to do so or offered financial or other
10 reasonable means to do so; OR

11 (d) abandons the child by leaving him under
12 circumstances that make reasonable the belief that the
13 parent or other person does not intend to resume care of the
14 child in the future; or

15 (e) ~~fails to provide the child with adequate care;~~
16 ~~supervision or guardianship by specific acts or omissions~~
17 ~~of a similarly serious nature requiring the intervention of~~
18 ~~the child protective service or a court.~~

19 (4) "Youth-in-need-of-care" means a youth who is
20 dependent or is suffering from abuse or neglect within the
21 meaning of this chapter. "Adequate health care" means any
22 medical or nonmedical remedial health care permitted or
23 authorized under state law.

24 (5) "Threatened harm" means imminent risk or DE harm.

25 (6) "A person responsible for a child's welfare" means

1 the child's parent, guardian, or foster parent; an employee
2 of a public or private residential institution, facility,
3 home, or agency; or any other person legally responsible for
4 the child's welfare in a residential setting.

5 (7) "Physical injury" means death, permanent or
6 temporary disfigurement, or impairment of any bodily organ
7 or function.

8 (8) "Mental injury" means an injury to the
9 intellectual or psychological capacity of a child as
10 evidenced by an identifiable and substantial impairment of
11 his ability to function within his normal range of
12 performance and behavior with due regard to his culture
13 IDENTIFIABLE AND SUBSTANTIAL IMPAIRMENT OF THE CHILD'S
14 INTELLECTUAL OR PSYCHOLOGICAL FUNCTIONING.

15 (9) "Dependent youth" means a youth:

16 (a) who is abandoned;

17 (b) who is without parents or guardian or not under
18 the care and supervision of a suitable adult;

19 (c) who has no proper guidance to provide for his
20 necessary physical, moral, and emotional well-being;

21 (d) who is destitute;

22 (e) who is dependent upon the public for support; or

23 (f) whose parent or parents have voluntarily
24 relinquished custody of the child and whose legal custody
25 has been transferred to a licensed agency.

1 (10) "Youth in need of care" means a youth who is
 2 dependent, abused, or neglected as defined in this section."

3 Section 3. Section 41-3-104, MCA, is amended to read:

4 "41-3-104. Payment for support of dependent--and
 5 neglected-children youth in need of care -- reimbursement by
 6 county. (1) Whenever agreements are entered into by the
 7 department of social and rehabilitation services for placing
 8 ~~dependent and neglected children~~ a youth in need of care in
 9 approved a licensed family foster homes ~~homes~~, or ~~licensed~~
 10 ~~private institutions~~ child care agency, group home, or
 11 private treatment facility, the department shall pay by its
 12 check or draft each month from any funds appropriated for
 13 that purpose the entire amount agreed upon for board,
 14 clothing, personal needs, and room of such children.

15 (2) On or before the 20th of each month the department
 16 shall present a claim to the county of residence of such
 17 children for one-half the payments so made during the month.
 18 The county must make reimbursement to the department within
 19 20 days after such claim is presented."

20 ~~Section 4. Section 41-3-105, MCA, is amended to read:~~

21 ~~"41-3-105. Recovery from parents--division between~~
 22 ~~state and county--(1) In the event any recovery is made~~
 23 ~~from the parent or parents of children for whom board,~~
 24 ~~clothing, personal needs, and room have been paid by the~~
 25 ~~state and county, any amount so recovered shall be divided~~

1 ~~equality between the department and the county of residence~~
 2 ~~of such child or children.~~

3 ~~(2) Any amount collected from a parent or parents,~~
 4 ~~when a child is placed in a foster home, shall be~~
 5 ~~transmitted to the department of social and rehabilitation~~
 6 ~~services. The department shall then pay to the county~~
 7 ~~one-half of the amount so collected."~~

8 NEW SECTION. Section 4. Interagency cooperation. To
 9 effectuate the purposes of this chapter, the county welfare
 10 department shall cooperate with and shall seek the
 11 cooperation and involvement of all appropriate public and
 12 private agencies, including health, education, social
 13 services, and law enforcement agencies; juvenile courts; and
 14 any other agency, organization, or program providing or
 15 concerned with human services related to the prevention,
 16 identification, or treatment of child abuse or neglect.
 17 Such cooperation and involvement may not include joint case
 18 management but may include joint policy planning, public
 19 education, information services, staff development, and
 20 other training.

21 NEW SECTION. Section 5. Child protection teams. The
 22 county attorney or the county welfare department may convene
 23 one or more temporary or permanent interdisciplinary child
 24 protective teams. These teams may assist in assessing the
 25 needs of, formulating and monitoring a treatment plan for,

1 and coordinating services to the child and his family. The
 2 supervisor of child protective services of the county
 3 welfare department or his designee shall serve as the team's
 4 coordinator. Members shall ~~serve at the invitation of the~~
 5 ~~coordinator and shall include representatives of appropriate~~
 6 ~~health, mental health, social services, and law enforcement~~
 7 ~~agencies~~ INCLUDE A SOCIAL WORKER, A MEMBER OF A LOCAL LAW
 8 ENFORCEMENT AGENCY, A REPRESENTATIVE OF THE MEDICAL
 9 PROFESSION, AND A COUNTY ATTORNEY.

10 Section 6. Section 41-3-201, MCA, is amended to read:

11 "41-3-201. Reports. (1) ~~Any physician who examines~~
 12 ~~attends or treats a person under the age of majority or any~~
 13 ~~nurse, teacher, social worker, attorney, law enforcement~~
 14 ~~officer, or any other person who has reason to believe that~~
 15 ~~a child has had serious injury or injuries inflicted upon~~
 16 ~~him or her as a result of abuse or neglect or has been~~
 17 ~~willfully neglected shall report the matter promptly to the~~
 18 ~~department of social and rehabilitation services, its local~~
 19 ~~affiliate, and the county attorney of the county where the~~
 20 ~~child resides.~~ When the professionals and officials listed
 21 in subsection (2) know or have reasonable cause to suspect
 22 that a child known to them in their professional or official
 23 capacity is an abused or neglected child, they shall report
 24 the matter promptly to the department of social and
 25 rehabilitation services or its local affiliate, who WHICH

1 then shall notify the county attorney of the county where
 2 the child resides.

3 (2) Professionals and officials required to report
 4 are:

5 (a) physician, resident, intern, or member of a
 6 hospital's staff engaged in the admission, examination,
 7 care, or treatment of persons;

8 (b) a nurse, osteopath, chiropractor, podiatrist,
 9 medical examiner, coroner, dentist, optometrist, or any
 10 other health or mental health professional;

11 (c) Christian Science practitioner and religious
 12 healers;

13 (d) school teachers, other school officials, and
 14 employees who work during regular school hours;

15 (e) a social worker, licensed day-care center, or any
 16 other licensed child-care facility;

17 (f) foster care, residential, or institutional worker;

18 or

19 (g) a peace officer or other law enforcement official.

20 (3) Any person may make a report under this section if
 21 he knows or has reasonable cause to suspect that a child is
 22 abused or neglected.

23 (4) NO PERSON LISTED IN SUBSECTION (2) MAY REFUSE TO
 24 MAKE A REPORT AS REQUIRED IN THIS SECTION ON THE GROUNDS OF
 25 A PHYSICIAN-PATIENT OR SIMILAR PRIVILEGE IF THE PERSON CAME

1 INTO POSSESSION OF SUCH INFORMATION AS A RESULT OF HIS
 2 TREATMENT OF THE CHILD.

3 ~~(2)(4)(5) This report~~ The reports referred to under
 4 this section shall contain:

5 (a) the names and addresses of the child and his or
 6 her parents or other persons responsible for his or her
 7 care;

8 (b) to the extent known, the child's age, the nature
 9 and extent of the child's injuries, including any evidence
 10 of previous injuries;

11 (c) any other information that the maker of the report
 12 believes might be helpful in establishing the cause of the
 13 injuries or showing the willful neglect and the identity of
 14 person or persons responsible therefor; and

15 (d) the facts which led the person reporting to
 16 believe that the child has suffered injury or injuries or
 17 willful neglect, within the meaning of this chapter."

18 NEW SECTION. Section 7. Procedure in case of child's
 19 death. (1) Any person or official required to report by law
 20 who has reasonable cause to suspect that a child has died as
 21 a result of child abuse or neglect shall report his
 22 suspicion to the appropriate medical examiner or law
 23 enforcement officer. Any other person who has reasonable
 24 cause to suspect that a child has died as a result of child
 25 abuse and OR neglect may report his suspicion to the

1 appropriate medical examiner or law enforcement officer.

2 (2) The medical examiner or coroner shall investigate
 3 the report and submit his findings, in writing, to the local
 4 law enforcement agency, the appropriate county attorney, the
 5 local child protective service, and, if the person making
 6 the report is a physician, the physician.

7 Section 8. Section 41-3-202, MCA, is amended to read:

8 "41-3-202. Action on reporting ~~---maintenance--of~~
 9 ~~central-registry-on-child-abuse.~~ (1) ~~if-from-said-report--it~~
 10 ~~shall--appear--that-the~~ Upon receipt of a report as required
 11 by 41-3-201 that a child suffered such injury or injuries or
 12 willful neglect, is or has been abused or neglected, a the
 13 social worker or the county attorney or a peace officer
 14 shall promptly conduct a thorough investigation into the
 15 home of the child involved or any other place where the
 16 child is present and into the circumstances surrounding the
 17 injury of the child and into all other matters which in the
 18 discretion of the ~~social worker shall--be~~ investigator are
 19 relevant and ~~material~~ to the investigation. ~~if-from-the~~
 20 ~~investigation-it-shall-appear-that-the-child--suffered--such~~
 21 ~~injury--or--injuries--or--willful-neglect,~~ the department shall
 22 provide--protective--services--to--protect--the--child--and
 23 preserve--the--family. ~~The department will advise the county~~
 24 ~~attorney of its investigation.~~

25 (2) ~~The investigating social worker shall also furnish~~

1 ~~a written report to the department of social and~~
 2 ~~rehabilitation services which shall have the responsibility~~
 3 ~~of maintaining a central registry on child abuse or willful~~
 4 ~~neglect cases. The social worker is responsible for~~
 5 ~~assessing the family and planning for the child. If the~~
 6 ~~child is treated at a medical facility, the social worker,~~
 7 ~~county attorney, or peace officer shall, consistent with~~
 8 ~~reasonable medical practice, have the right of access to the~~
 9 ~~child for interviews, photographs, and securing physical~~
 10 ~~evidence and have the right of access to relevant hospital~~
 11 ~~and medical records pertaining to the child.~~

12 (3) If from the investigation it appears that the
 13 child suffered abuse or neglect, the department shall
 14 provide protective services to the child and MAY PROVIDE
 15 PROTECTIVE SERVICES TO any other child under the same care.
 16 The department will advise the county attorney of its
 17 investigation.

18 (4) The investigating social worker, within 60 days of
 19 commencing an investigation, shall also furnish a written
 20 report to the department. The department shall maintain a
 21 record system containing child abuse and neglect cases.

22 (5) Any person reporting abuse or neglect which
 23 involves acts or omissions on the part of a public or
 24 private residential institution, home, facility, or agency
 25 shall be responsible for ensuring that the report is made to

1 the department of social and rehabilitation services, its
 2 local affiliate, and the county attorney of the county in
 3 which the facility is located."

4 Section 9. Section 41-3-203, MCA, is amended to read:
 5 "41-3-203. Immunity from liability. Anyone
 6 ~~participating in the making of a report pursuant to the~~
 7 ~~provisions of this chapter or investigating or reporting any~~
 8 ~~incident of child abuse or neglect, participating in~~
 9 ~~resulting judicial proceedings, resulting therefrom or~~
 10 ~~furnishing hospital or medical records as required by~~
 11 ~~41-3-202 shall be presumed to be acting in good faith and in~~
 12 ~~so doing shall be~~ is immune from any liability, civil or
 13 criminal, that might otherwise be incurred or imposed,
 14 unless the person acted in bad faith or with malicious
 15 purpose."

16 Section 10. Section 41-3-204, MCA, is amended to read:
 17 "41-3-204. Admissibility and preservation of evidence.
 18 (1) In any proceeding resulting from a report made pursuant
 19 to the provisions of this chapter or in any proceeding where
 20 ~~such a~~ the report or any IIS contents thereof are sought to
 21 be introduced into evidence, ~~such the~~ report or its contents
 22 thereof or any other fact or facts related thereto ~~to the~~
 23 ~~report~~ or to the condition of the child who is the subject
 24 of the report shall not be excluded on the ground that the
 25 matter is or may be the subject of a physician-patient

~~privilege or similar privilege or rule against disclosure of confidentiality granted in Title 26, Chapter 1, Part 8, except the attorney-client privilege granted by 26-1-803~~
~~RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD AND GRANTED IN TITLE 26, CHAPTER 1, PART 8, EXCEPT THE ATTORNEY-CLIENT PRIVILEGE GRANTED BY 26-1-803.~~

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered trauma ABUSE or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective

service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible."

Section 11. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services, and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential unless the court determines that they should be released except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protection teams as authorized under [section 6] for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may

1 ~~permit public disclosure if it finds such disclosure to be~~
2 ~~necessary for the fair resolution of an issue before it.~~

3 (4) Nothing in this section is intended to affect the
4 confidentiality of criminal court records or records of law
5 enforcement agencies."

6 Section 12. Section 41-3-301, MCA, is amended to read:

7 "41-3-301. Emergency protective service. (1) Any child
8 protective social worker of the department of social and
9 rehabilitation services, the county welfare department, a
10 peace officer, or ~~the~~ county attorney who has reason to
11 believe any youth is in immediate or apparent danger of
12 ~~violence--or--serious-injury harm~~ may immediately remove the
13 youth and place him in a protective facility. The department
14 may make a request for further assistance from the law
15 enforcement agency or take ~~such--legal--action-as-may-be~~
16 ~~appropriate legal action. The department may also leave the~~
17 ~~child in his home and place a child protective attendant in~~
18 ~~the home for a period of 48 hours.~~

19 ~~(2) A--petition--shall--be--filed--within--48--hours--of~~
20 ~~emergency--placement--of--a--child--unless--arrangements~~
21 ~~acceptable--to--the--agency--for--the--care--of--the--child--have--been~~
22 ~~made--by--the--parents. No child who has been removed from his~~
23 ~~home or any other place for his protection or care may be~~
24 ~~placed in a jail.~~

25 ~~(3) The--department--of--social--and--rehabilitation~~

1 ~~services--and--the--county--welfare--department--shall--comply--with~~
2 ~~the--procedure--set--forth--in--41-3-202. A petition shall be~~
3 ~~filed within 48 hours of emergency placement of a child~~
4 ~~unless arrangements acceptable to the agency for the care of~~
5 ~~the child have been made by the parents.~~

6 (4) The department of social and rehabilitation
7 services and the county welfare department shall make such
8 necessary arrangements for the youth's well-being as are
9 required prior to the court hearing."

10 Section 13. Section 41-3-302, MCA, is amended to read:

11 "41-3-302. Responsibility of providing protective
12 services. ~~(1)~~ The department of social and rehabilitation
13 services and the county welfare department shall have the
14 primary responsibility to provide the protective services
15 authorized by this chapter and shall have the authority
16 pursuant to this chapter to take temporary, limited, or
17 permanent custody of a child when ordered to do so by the
18 court, including the right to give consent to adoption.

19 (2) The county welfare department shall respond to
20 emergency reports of known or suspected child abuse or
21 neglect 24 hours a day, 7 days a week."

22 NEW SECTION. Section 14. Guardian ad litem. In every
23 judicial proceeding the court shall appoint for any child
24 alleged to be abused or neglected a guardian ad litem who,
25 whenever possible, shall be an attorney. When necessary the

1 guardian ad litem may serve at public expense.

2 NEW SECTION. Section 15. Penalty for failure to
3 report. ~~{1}~~ Any person, official, or institution required by
4 law to report known or suspected child abuse or neglect or
5 required to perform any other act who fails to do so or who
6 prevents another person from reasonably doing so is
7 ~~punishable by a fine not to exceed \$500, by imprisonment in~~
8 ~~the county jail not to exceed 30 days, or by both such fine~~
9 ~~and imprisonment and shall be~~ civilly liable for the damages
10 proximately caused by such failure or prevention.

11 ~~{2} A parent or other person responsible for a child's~~
12 ~~care who as a result of the legitimate practice of his~~
13 ~~religious beliefs does not provide specified medical~~
14 ~~treatment for a child is not considered negligent for that~~
15 ~~reason alone. However, when the child's health requires it,~~
16 ~~the court may order that medical services be provided to the~~
17 ~~child pursuant to 41-3-403.~~

18 Section 16. Saving clause. This act does not affect
19 rights and duties that matured, penalties that were
20 incurred, or proceedings that were begun before the
21 effective date of this act.

22 Section 17. Codification. (1) It is intended that
23 sections 4 and 5 AND 6 of this act be codified as an
24 integral part of Title 41, chapter 3, part 1, and the
25 provisions of Title 41, chapter 3, apply to sections 4 and 5

1 AND 6 of this act.

2 (2) It is intended that section 8 of this act be
3 codified as an integral part of Title 41, chapter 3, part 2,
4 and the provisions of Title 41, chapter 3, apply to section
5 8 of this act.

6 (3) It is intended that sections 15 and 16 of this act
7 be codified as an integral part of Title 41, chapter 3, part
8 3, and the provisions of Title 41, chapter 3, apply to
9 sections 15 and 16 of this act.

10 SECTION 18. SECTION 41-4-102, MCA, IS AMENDED TO READ:

11 "41-4-102. Financial responsibility. Financial
12 responsibility for any child placed pursuant to the
13 provisions of the Interstate Compact on the Placement of
14 Children shall be determined in accordance with the
15 provisions of Article V thereof in the first instance.
16 However, in the event of partial or complete default of
17 performance thereunder, the provisions of Title 40, chapter
18 5 (Revised Uniform Reciprocal Enforcement of Support Act)
19 and 41-3-104, ~~41-3-105(2)~~, 41-3-404, and 41-3-405 also may
20 be invoked."

21 SECTION 19. SECTION 41-3-404, MCA, IS AMENDED TO READ:

22 "41-3-404. Hearing. (1) In a hearing on a petition
23 under 41-3-401 or 41-3-402, the court shall determine
24 whether said youth is ~~an abused, neglected, or dependent~~
25 child a youth in need of care and ascertain, as far as

1 possible, the cause thereof.

2 (2) The court shall hear evidence regarding the
3 residence of the child, whereabouts of the parents,
4 guardian, or nearest adult relative, the financial ability
5 of any such ~~the~~ parents or parent to pay the cost of care of
6 the child, whether or how long the child has been maintained
7 in whole or in part by public or private charity, and may
8 take into consideration the report of the county welfare
9 department filed with the clerk of the court, pursuant to
10 41-3-405.

11 (3) In all civil and criminal proceedings relating to
12 abuse, neglect, or dependency, ~~the doctor-patient-privilege~~
13 ~~and husband-wife-privilege shall not none of the privileges~~
14 RELATED TO THE EXAMINATION OR TREATMENT OF THE CHILD AND
15 granted in Title 26, chapter 1, part 8, except the
16 attorney-client privilege granted by 26-1-803, apply to the
17 extent any testimony relates to such matters."

-End-